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PARENTAL KIDNAPING AND CHILD SUPPORT

ORIGINAL

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HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

PROBLEMS OF DOMESTIC AND INTERNATIONAL KIDNAPING AND CHILD SUPPORT ENFORCEMENT

JULY 19, 1985

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PARENTAL KIDNAPING AND CHILD SUPPORT

FRIDAY, JULY 19, 1985

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Present: Senator McConnell.

Staff present: Neal Manne, chief counsel; Tracy McGee, chief clerk; and Tracy Pastrick, staff assistant.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, ladies and gentlemen; we will commence this hearing on the Juvenile Justice Subcommittee of the Judiciary Committee on the problems of domestic and international parental kidnapings and child support.

This hearing has been convened on short notice so that we could inquire into the kidnaping of the Hickman child, an illustrative problem of parental kidnaping, and a very valid one, considering the fact that the father has taken the young girl to Iran, which poses unique, special, and difficult problems for having the child returned.

All the principles we may talk about are relatively insignificant in the face of a specific case. Ms. Hickman is present today. We have just had a very brief informal conversation with her about the status of her daughter, who is in Iran. This poses a setting for a broader inquiry into the problems of parental abduction, which is an overwhelming problem in this country today.

For approximately 100,000 reports of parental kidnaping each year, and beyond the reported cases, authorities estimate that there may be as many as 850,000 parental kidnapings each year. The statistics show that it is a very difficult matter, with some 70 percent of these parental abductions, resulting with the child never seeing the parent again who had originally held custody.

There has been legislation on the Parental Kidnaping Prevention Act of 1980, which is designed to make a very Federal presence on this issue, and our inquiry today on the Dixon matter will focus on what Federal authorities may or may not be doing on the technicalities which may be at issue.

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It may be, as the facts will disclose, that the failure of Federal authorities to act properly may not have a causal effect on what has happened here, in light of the reports that the child was taken to Iran on the very first day. But it sets the point of inquiry of what the Federal action ought to be, in terms of what the Department of Justice does and what the FBI does.

We are going to be looking at the same time today, following our inquiry on the parental abduction issue, on the question of child support. This is an issue which is very closely related to the problems posed, when support is not forthcoming from a father who leaves the home and disregards his legal obligations for support.

In this country, there are some 8.7 million women who live with a child under 21 whose fathers are not living in the household, and who have disregarded their obligations imposed by law for support.

Congress has acted, with the Child Support Enforcement Act of 1984, an act which will become effective in October of this year, that these issues are closely related in terms of the difficulties faced by parents who have had a child abducted or women who have had a father leave the household, failing in obligations for parental support.

These matters are obviously of great importance on the national scene and matters of concern of the Juvenile Justice Subcommittee. A great deal more needs to be done in the way of divorce procedures, and seeing to it that the laws are enforced on these important subjects.

I am joined today by my distinguished colleague from Kentucky, Senator McConnell, who has had extensive experience in related fields.

I am delighted to yield to Mr. McConnell for an opening statement.

OPENING STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you very much, Mr. Chairman.

I want to commend you for holding this hearing on this important topic. I have an opening statement which I will insert in the record.

I would like to make a couple of points about parental kidnapings. There has been a good deal of discussion and much written in the last few days about the accuracy of statistics generally in the whole field of missing children. Many of us have acted in the past to promote the enactment of legislation.

I now suspect that there are lobby groups who have argued that there were a great many more cases than in fact there were, but clearly, no matter whether you accept the highest or the lowest numbers for the various categories of missing children, it is an indisputable fact that the parental kidnaping is the most common situation in the category of missing children.

I think our distinguished chairman has done an excellent service today of picking a perfect example of parental kidnaping, and I commend you again for holding this hearing. I am looking forward to hearing from the witnesses, although I must say in advance, as is so often the case around here, that we have a lot of things going

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on at the same time, and at some point I must depart for a markup session in the Agriculture Committee.

Thank you very much, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator McConnell. We do understand your other commitments and I appreciate your being here. It is always difficult. There are other Senators on the subcommittee who are very much interested in this problem. I know the staff will be following the proceedings here and checking on the transcript and it will be very helpful on the issue.

I would like to start with a slight modification on the witness sequence, and call on Ms. Rebecca Hickman, at the outset, to put in focus the issue of her own child.

If you will step forth at this time. I might say preliminarily that Mrs. Hickman has been in contact with my Pittsburgh office, where we have acted in a sequence of events to try to assist her. Mrs. Hickman has written to the President on July 1 of this year.

Without objection, a copy of her letter to the President will be included at this point in the record.

[Information follows:].

U.S. SENATE,
Washington, DC, July 15, 1985.

Hon. GEORGE P. SHULTZ,
Secretary, U.S. Department of State,
Washington, DC.

DEAR SECRETARY SHULTZ: Mariam Ruth Zamani, a four year old resident of Pittsburgh, Pennsylvania, is a tragic victim of parental abduction. Mariam was abducted from nursery school by her father seven months ago and subsequently was taken to Iran. I am advised that Mariam's mother, Ms. Rebecca Hickman, was awarded custody of her daughter in October 1984; she had no knowledge of nor consented to her estranged husband's abduction of Mariam.

I have assisted Ms. Hickman's courageous efforts to recover her daughter, but those efforts have been unsuccessful so far. Recently Ms. Hickman wrote to President Reagan with her plea for help. Enclosed is a copy of her letter. I have been advised by the Department of State's Office of Citizens Consular Services that the number of reported cases of children being abducted and taken abroad has increased at an alarming rate: in 1973 there was only 1 report; last year, 292 such cases were reported.

The State Department, through the efforts of American embassies and consulates, has been instrumental in assisting parents involved in such child custody disputes. Mariam Zamani's case obviously poses special problems, because Iran is a third-representation country with an intransigent regime. Nevertheless, I believe that the Administration should publicly call upon Iran to return Mariam, as a gesture of good will. I strongly urge you to make every possible effort to secure Mariam's safe return.

Sincerely,

ARLEN SPECTER.

Enclosure.

URGENT: AN AMERICAN CITIZEN IS RIGHT NOW BEING HELD HOSTAGE IN IRAN

SHE HAS BEEN THERE FOR SEVEN MONTHS

PITTSBURGH, PA, *July 1, 1985.*

President RONALD REAGAN,
The White House,
Washington, DC.

MR. PRESIDENT: I am writing about a hostage who is in Iran now, who was taken there seven months ago. She is my daughter, an American citizen, now four years old. She was taken to another country without her custodial mother's knowledge or consent, is an unknowing victim, and, like other hostages have been, she is in poten-

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tial danger because Iraq periodically bombs the city where she is. Her name is Mariam Ruth Zamani, born December 17, 1980.

My husband, Hossein Sadeghi Zamani, is an Iranian citizen. After he and I separated in October of 1984, the court awarded complete custody of Mariam to me. On December 7, six weeks later, Hossein picked up Mariam from her nursery school at noon and was out of the country with her in a few hours.

They are now in Esfahan, Iran, but I do not know the address. All I have is this address of a brother's shop, where I send letters to her: Mr. Mehdi Sadeghi, Street of Masjad Seyed, in front of Bank Meli of Iran, Store of Shahram Esfahan, Iran, telephone 98-31-32019.

My family has spent seven months and a good deal of money trying to find my daughter and bring her home. We had much help from county police and local FBI, and missing children centers in Pittsburgh, New York, and D.C. We had support and help from Senators Robert Dole and Arlen Specter, and from several State Department employees. We have had help and emotional support from countless individuals, ordinary people, both Iranian and American. But Mariam is still in Iran.

It occurs to me now that there is a way to get this hostage home, since hostages in Iran were freed once before, and you just won the release of hostages in Lebanon. You did a good job with this 17-day ordeal, making discreet arrangements so it ended quickly. I believe you could do the same for Mariam.

I have two ideas on this, which involve a hostage exchange. Of course you and your experts will know best how to deal with it, but I will give you my ideas. One is that you exchange a few Iranians who are in prison in this country for the child. Believe me, my child is more important than a few prisoners who could be sent back to Iran.

The second idea is to exchange Mariam for a nine-year-old Iranian boy who is here in Pittsburgh. Several months ago he and his father came here from Iran to go to Children's Hospital for the boy's eye. The father was arrested with heroin in his shoe. The boy is staying with a local family, while his father is in jail and his mother is in Iran, no doubt desperately missing him as I am missing Mariam. I'm sure the Iranian government would prefer to have the boy there since he is a citizen of Iran. In their eyes he is the more valuable of the two children because he is male, so they might want to exchange the female child for the male child.

Knowing Iran's culture, government, and dominant religion as I do, they will have to feel that they get something worthwhile in return for sending a hostage back. They will not respond favorably to threats, as you well know, or to political or economic pressure, but are likely to agree to a deal in which they get what they want, plus some favorable world opinion for reuniting a mother and child. Certainly if the Iranian government pressures my husband to return Mariam to me, he will have no choice but to do so.

So, another American citizen is held hostage, and has been for seven months, unknown to the American public. I think it is time that Americans know about Mariam and demand her release.

I cry many nights from the emptiness without my child, and have had to undergo counseling to help me deal with my loss. Please, please help me get my Mariam home.

Sincerely,

REBECCA HICKMAN.

Senator SPECTER. Following our investigation, I wrote the Secretary of State, Mr. Shultz, on July 15, 1985, urging the State Department action with Iran to try to bring about the return of this child in accordance with U.S. law. In the case of a custody decree, as such, U.S. law places custody of the child in tender years with the mother. As I have learned from Mrs. Hickman, even Iranian law gives the preference to the mother of a child up to the age of 7, and the young girl here was only 4.

So with those very brief preliminaries, Mrs. Hickman, we welcome you here. We understand the very great difficulties, and the situation is difficult for you, and we appreciate your coming forward. We look forward to your testimony.

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STATEMENT OF REBECCA HICKMAN, PITTSBURGH, PA

Ms. HICKMAN. When my child Mariam was abducted, I tried to file a missing persons report, but for 3½ days, three police departments shuttled me around among them, because they were arguing over whose jurisdiction it was. It was 10 days, and it took a court order to get any law enforcement agency on the case. I think it was because it was Mariam's father, who took her that it was not taken seriously enough.

When a child is kidnaped and held in this country, or taken to another country by a stranger or by the father, the pain and the trauma of the parent who loses the child is the same. When I knew that she was gone, I was scared. I did not know if she was OK, I did not know where she was. The loss of my child, of anybody's child, is a real physical pain. It's part of me that has been ripped out.

A parental kidnaping is not a spat between a husband and wife; it is a horrifying experience. The reason we search for kidnaped children, though, is because they are not safe, and the abductor has no right to hold the child. I think that law enforcement agencies and government officials need to know that, to understand that the abducted child, even by a parent, is at risk.

The Justice Department has written that "children abducted by noncustodial parents are often at risk. They are often objects of physical abuse and emotional trauma." In the case of my child, she is in physical danger because her father was an abusive father, and he took her into a war zone. I am sure she's suffered emotional trauma, because she was 3 years old when he took her. She was ripped away from me, and taken to a country where she did not know the culture or the language. Her father has told her he will not let her come back here, even though she has asked to come back.

I am asking the Government for help, because I have tried everything I can on my own, and I have not gotten anywhere. The three main things that I want to say, then, are that first of all I would like to have my child returned; second, I would like to see some laws so that police departments and law enforcement agencies take parental kidnapings seriously, as seriously as stranger abductions; and third, that some laws be made so when an American child is held overseas, they are given the same protection under U.S. laws as American adults who are kidnaped and held overseas. I hope these laws, these things can be done before another child is gone.

[Information follows:]

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MARIAM RUTH ZAMANI

Abducted and taken to Iran, December 7, 1984

"The government does not view an abducted child as a 'hostage' and has not asked foreign nations to return children."
(James T. Callahan, State Department Spokesman, Bureau of Consular Affairs, as quoted in the Pittsburgh Post-Gazette on July 13, 1985)

"The problem of parental kidnapping--the taking of a child by the noncustodial parent--is a highly complicated and difficult one. These abducted children are definitely at risk and are often the victims of physical abuse and emotional trauma. No one knows the exact dimensions of the problem, but they are significant."
(Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, from a cover letter accompanying the publication entitled Parental Kidnapping)

If the United States asks foreign nations to return American adults kidnapped and held (as in the case of the TWA passengers abducted to Lebanon recently, and the seven other hostages still in Lebanon), but does not ask foreign nations to return children kidnapped and held, then those children are not being given the same protection under U.S. laws as are other American citizens. My child, Mariam Ruth Zamani, is being denied her rights to protection as an American citizen if the United States government does not try to return her to the United States.

Consider the following comparisons of Mariam Zamani and the seven Americans being held now in Lebanon:

MARIAM ZAMANI	7 AMERICANS IN LEBANON
(1) U.S. citizen	U.S. citizens
Taken to and held in a foreign country, with no choice	Held in a foreign country, with no choice
(2,3) Wishes to return to the U.S., and is not allowed to do so	Probably wish to return to the U.S., and are not allowed to do so
Is unable to leave on her own	Are unable to leave on their own
(4) Is in potential danger	Are in potential danger
(5) Abductor has no legal right to hold her	Abductors have no legal right to hold them

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(1) Born in the United States December 17, 1980. Mariam is an American citizen. She does not possess dual citizenship. "Under the nationality laws of the United States as delineated in the Immigration and Nationality Act of 1952, your daughter is considered to possess only United States citizenship. While laws of many foreign nations accept the theory of dual citizenship, those of this nation do not."
(William D. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, U.S. Department of State, from a letter to me dated July 8, 1985)

(2) Hossein Sadeghi Zamani, who kidnapped Mariam Zamani, told me in a phone conversation on June 9, 1985, that he keeps telling Mariam that they are going to stay in Iran, but "she keeps wanting to go back."

(3) On at least four occasions (December 12, 1984; January 8, 1985; June 9, 1985; and June 26, 1985) Hossein Zamani has stated in telephone conversations to both me and my father, Clarence Hickman, that he will never return Mariam to the U.S., that she will live in Iran, and that I will never see her again. On December 12, 1984, he made the statement, "Just let your government try to find me now."

(4) Mariam is in potential danger from her abductor, and because she is in a war area. The hostages still in Lebanon are in potential danger for the same reasons.
Iraq has bombed Esfahan, Iran, where Mariam is, and people there have been killed.
Hossein is a physically and emotionally abusive father. For Mariam's safety, I took her out of the home where the three of us lived together, and went to a shelter for abused and battered women and children. At that time Hossein was reported for child abuse to the Children and Youth Services Division of the Allegheny County Police. Alfred S. Regnery, of the U.S. Justice Dept., writes of parental kidnapping, "These abducted children are definitely at risk and are often the victims of physical abuse and emotional trauma."

(5) Hossein Zamani is in violation of the court order which granted me full, permanent custody of Mariam Ruth Zamani. In addition, he is holding her in a foreign country.

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December 7, 1984
I reported my child, Mariam Zamani, as missing. She was three years old. I was shuttled among Wilkinsburg, Monroeville, and Plum Borough, PA. police departments until December 10. Each department claimed the case was not in its jurisdiction.

December 10, 1984
A Wilkinsburg, PA. police officer agreed to take the missing child report.
A court order was issued that Mariam Zamani not be taken from the jurisdiction of the Allagheny County, PA. court.

December 12, 1984
Bob Derbyshire of the National Center for Missing and Exploited Children discovered that Mariam Zamani had not been entered into the NCIC (National Crime Information Center) computer. A Monroeville, PA. Police Department detective did so late this night.

December 17, 1984
An Order of the Court was issued for the arrest of Hossein Zamani. The Allagheny County Sheriff's Office was directed to locate him, and to communicate the existence of the court order and arrest warrant to the FBI and the Allagheny County District Attorney.

January 8, 1985
New York Telephone Security traced a call to Overbrook, KS. as originating in Iran. I spoke to both Hossein Zamani and Mariam Zamani.
The Allagheny County Police Department closed the case since Mariam Zamani was in Iran.

January and February, 1985
Missing Children of Allagheny County in McKees Rocks, PA. gathered information on Hossein Zamani and Mariam Zamani in an attempt to find a way to return Mariam to the United States.

July 1, 1985
I sent a formal written request to President Ronald Reagan for help in returning Mariam Zamani to the United States.

July 3, 1985
I wrote to Secretary of State George Shultz, Bernard Kalb in the State Department, and Henry Kissinger asking for help. With each written request I enclosed a copy of the letter I sent President Reagan.

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Since Mariam Ruth Zamani was kidnapped on December 7, 1984, my attorney William L. Steiner and I have requested help in recovering her from the following people and organizations:

President Ronald Reagan

George Shultz, Secretary of State
Bernard Kalb, State Department

*Senator Arlen Specter
*Senator Robert Dole
Rep. Thomas P. O'Neill

Henry Kissinger

Former President Jimmy Carter

*State Department Legal Division, Office of Passport Services
State Department Middle East Section
*State Department Office of Child Welfare and Custody

Embassy of the Democratic and Popular Republic of Algeria
Interests Section of the Islamic Republic of Iran

Ross Perot, Electronic Data Systems Corp., Dallas, TX.

*Colleagues of Hossein Zamani in the Westinghouse Nuclear Fuel Div., Monroeville, PA.

*Iranian relatives, friends, and acquaintances in U.S. and Iran

*National Center for Missing and Exploited Children, Department of Justice
Childfind, New Paltz, N.Y.
*Missing Children of Allegheny County, McKees Rocks, PA.

Federal Parent Locator Service, Rockville, MD.
State Parent Locator Service, Harrisburg, PA.

*Lance A. Levenstein, Attorney, Fairfax, VA.

*Rusty McAllister, Private Investigator, Jackson, MS.

*Treasure World Travel Agency, New Y York City

Police Departments in: Wilkinsburg, PA.; Monroeville, PA.; Plum Borough, PA.;*Allegheny County, PA.;*Jackson, MS.; New York City 113th Precinct
*FBI in Pittsburgh, PA.; Jackson, MS.; *Kansas City, MO.
*Highway Patrol, Jackson, MS.
*Port Authority, JFK Airport, NY.; *LaGuardia Airport, NY.;*Washington National Airport, D.C.

* Asterisks indicated those who have given ideas and contacts for finding and returning Mariam Zamani, and those who actively searched for her.

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Senator SPECTER. Thank you very much, Ms. Hickman.

On the chronology of events, as I understand it, your daughter, age 4, was taken by Mr. Zamani from nursery school?

Ms. HICKMAN. Yes.

Senator SPECTER. What date did that occur?

Ms. HICKMAN. It was on Friday, December 7, 1984.

Senator SPECTER. And when did you first find out that he had taken her?

Ms. HICKMAN. It was the following day, when she was supposed to be taken to a babysitters, and was going to spend the night with him, and I called to try to find them, and I knew they were gone when I couldn't get a hold of him.

Senator SPECTER. And the court had given you custody of your child?

Ms. HICKMAN. I have custody, yes.

Senator SPECTER. And when did those custody proceedings initiate?

Ms. HICKMAN. They were initiated in October, probably early November, when I first left home where the three of us lived.

Senator SPECTER. And what is the occupation of Mr. Zamani?

Ms. HICKMAN. He is a nuclear engineer.

Senator SPECTER. He was working in the Pittsburgh area?

Ms. HICKMAN. Yes. He worked for Westinghouse.

Senator SPECTER. When did you first find out that Mr. Zamani had taken your child out of the country?

Ms. HICKMAN. I didn't know until January 8 where she was.

Senator SPECTER. And what action did you take immediately upon finding that your child was gone? What did you do?

Ms. HICKMAN. As I said, I tried to file a missing persons report. I contacted Senator Dole's office in Kansas, since I am from Kansas originally.

Senator SPECTER. Where are you from in Kansas?

Ms. HICKMAN. From the southwest corner of Kansas.

Senator SPECTER. What is the name of the town?

Ms. HICKMAN. Sublette.

Senator SPECTER. So you contacted Senator Dole.

Ms. HICKMAN. Right. And I also contacted the legal department of Passport Services in the State Department to stop issuance of an American passport for Mariam. I got in contact with Tom Mayor of Child Welfare and Custody in the State Department. He was able to—I thought my husband may be in Thailand, because his brother was there. He was able to get the Embassy in Thailand to get the local police to hunt for them in Bangkok. I tried to get the FBI.

Senator SPECTER. What response did the Federal Bureau of Investigation give to you when you tried to get their assistance?

Ms. HICKMAN. They said they could not get involved until someone else—I could not request their involvement, someone else had to. Finally, a court order did that.

Senator SPECTER. They wanted to have an unlawful flight to avoid prosecution warrant issued before they would step into the case?

Ms. HICKMAN. Yes. I cannot remember exactly, but I know that that was one of the sticking points.

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Senator SPECTER. One of the issues which this subcommittee will consider is whether there ought to be a modification of Federal law to avoid the delay in obtaining a warrant for unlawful flight to avoid prosecution. At best that takes some time, and time is of the essence.

I think it is fair to say in this situation, even if the FBI had acted immediately, they could not have stopped your daughter from being abducted, because, as you said, she was taken on December 7.

Ms. HICKMAN. Yes.

Senator SPECTER. She was taken from the country within a few hours.

Ms. HICKMAN. But the thing it would have done was, it would have relieved some of my anxiety, because I felt like nobody was doing anything except me.

Senator SPECTER. Well, one of the amendments which I am going to consider and bring to the subcommittee's attention is an amendment which would authorize the FBI to step into a case like this without the prior issuance of an unlawful flight warrant. I was a DA, and I know that takes some time, even if it is processed immediately.

For Federal authorities to step into a case where there is reason to believe that a parent has abducted a child, minutes may save the situation, could stop departure and rescue a child.

What response did you get from Federal authorities after your effort to get the FBI to step into the case?

Ms. HICKMAN. The FBI was on the case for about 2 days, and again was pulled off of it because of the technicalities.

Senator SPECTER. Now, the technicality that you refer to is information provided to me that the Justice Department would not permit the FBI to continue its investigation because the father had the mother's permission when he met the daughter in Pennsylvania, so that technically he was not a fugitive felon upon leaving the State. Is that the reason which was given to me?

Ms. HICKMAN. They kept telling me he had the same right to have her as I did.

Senator SPECTER. But he did not, because you had custody.

Ms. HICKMAN. Yes.

Senator SPECTER. But the point was that he had the right to have her for a temporary period of time.

Ms. HICKMAN. Yes. The verbal agreement was that she would be back by Sunday.

Senator SPECTER. So when he took her from school, he had a right, so to speak, because of your arrangement with him?

Ms. HICKMAN. Yes.

Senator SPECTER. But whatever rights he had were breached as soon as he implemented an effort to take her from the country?

Ms. HICKMAN. Yes.

Senator SPECTER. Well, that is another sticking point in the particular technicalities which will receive the attention from the subcommittee as to a potential change in Federal law, because it is at that instance at which the Federal authorities ought to act.

Ms. HICKMAN. The police department also kept asking me who had custody. That was one of their big concerns. My position was

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at that time, it should not have mattered, even if I were the non-custodial parent, who had custody, they should have found the child first. Because whichever parent can not find the child is worried. They could have first found the child and then dealt with who had custody.

Senator SPECTER. Ms. Hickman, did you have a court order on custody?

Ms. HICKMAN. Yes.

Senator SPECTER. Well, it seems to me that is that. The rights of the father are very limited, and as soon as they were exceeded, there should have been law enforcement action. Too often there is a bureaucratic malaise that sets in with any reason not to act out of concern about what the rights are, but I think you accurately stated you have to attain custody of the child with control by law enforcement officers, and then have it adjudicated to whoever has custody.

Let me yield to Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman.

I am interested in the cross-jurisdictional agency problems that you had. How many different police departments did you deal with?

Ms. HICKMAN. Three. Three local ones, and the Allegheny County Police was a fourth.

Senator MCCONNELL. Was that because there was uncertainty about where the kidnaping occurred? How did all that develop?

Ms. HICKMAN. I lived in one jurisdiction, he lived in another, and she was taken from a third, and they could not decide who should handle the case.

Senator MCCONNELL. Was it your impression in dealing with them that this was a common problem, and they also had been around the track before in this kind of jurisdictional difficulty?

Ms. HICKMAN. No. That was not my impression that it was common; but I have heard since that it is. But my impression was that it was just an argument between my husband and me, and they did not see any reason to get excited about it.

Senator MCCONNELL. So you think it was a bigger problem, and it was a parental kidnaping, and they couldn't figure out which agency should have control of it? Or was it both?

Ms. HICKMAN. It was both.

Senator MCCONNELL. I was chief executive officer of a county that had 90 small cities in it, including the city of Louisville, which is not a small city, and we frequently ran into these kinds of turf disputes, and generally this kind of case, which most law officials do not like anyway, because they are domestic disputes, and they do not want to mess with them.

The first line of resistance is to first claim that it is somebody else's jurisdiction, and the way we overcame that was to put together an interagency cross-jurisdictional unit, to which everyone relinquished some authority, and it greatly diminished the turf battles. This unit had officers appointed to it, not only from different agencies, but from different disciplines.

There were social workers and police officers in it. It greatly diminished that kind of thing. Then the second step was to upgrade the parental kidnaping to a serious matter, and I think a lot of

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that is a question of attitude. I do not think you can totally legislate that. It requires more publicity as in cases of this kind against a largely skeptical law enforcement community that these parental kidnapings are serious matters, and frankly, I do not know if there is anything we can do at a Federal level to solve that problem. Local agencies have to determine that it is important, rise above their turf disputes, and achieve a level of cooperation. You might be the catalyst for bringing that about in Pittsburgh. It seems to me they can use it.

My next line of inquiry has to do with my own ignorance. You indicated in your testimony that American children are treated differently from American adults abroad. I do not know much about that; and I would like you to elaborate on that.

Ms. HICKMAN. James Callahan, a State Department spokesman for the Bureau of consular affairs, was quoted in the Pittsburgh Post-Gazette newspaper as stating that "The Government does not view an abducted child as a hostage and does not ask foreign nations to return children." My contention is that, as I write in this handout, comparisons between my daughter and other hostages, Americans who are also held in foreign countries, are the same. And she should be given the same consideration as an American citizen, to try to get her back here.

She is in danger, she is held there by no choice of her own.

Senator MCCONNELL. I am wondering if that is a matter of statute or practice that we choose to view these?

Ms. HICKMAN. I do not know, but it should not be, whichever it is.

Senator SPECTER. Thank you very much, Senator McConnell.

A few more questions, Ms. Hickman. You stated that your daughter wants to return to you. Would you tell us a little bit more about that, please.

Ms. HICKMAN. In a conversation with my husband by telephone, probably a month ago, I asked him if I could come to Iran to see her. He said no, he did not want me there. He said, "I have been telling Mariam that this is where she is going to live, and that would confuse her, because she keeps wanting to go back."

Senator SPECTER. Have you talked to your little girl since she was taken from you?

Ms. HICKMAN. January 8 was the last time.

Senator SPECTER. On the phone?

Ms. HICKMAN. Yes.

Senator SPECTER. What did she say to you at that time?

Ms. HICKMAN. Regular 4-year-old things. I asked her if she was learning to speak Farsi, the language, and she said yes. She was excited about that.

Senator SPECTER. But she told you she wanted to come back and live with you?

Ms. HICKMAN. She did not say that. My husband told me that is what she said.

Senator SPECTER. Your husband told you that she wanted to come back and live with you?

Ms. HICKMAN. Yes. He said he will never return to this country.

Senator SPECTER. Senator McConnell has raised a very important point on cooperation among various jurisdictional units, and that is

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something which we will pursue, to see if it is possible to get people in Allegheny County to have the kind of unit that Senator McConnell suggests, and to see if that cannot be done more broadly.

We might condition some of the Federal grants that we have with the Office of Juvenile Justice to require this kind of participation as a condition of receiving Federal funding so that we can implement local action in that kind of problem.

Ms. Hickman, do you have any final statement that you would like to make, as far as advice to other mothers under similar circumstances as to how to avoid this kind of problem?

Ms. HICKMAN. My advice would be if you have to take a child out of your home, my advice is to immediately get some sort of court ordered custody. Because Mariam and I were at a shelter for abused women and children—there were two other women there who had lost their children—and I found that it is that sort of an abusive personality that is likely to take a child, and so especially for women in that situation, to understand that their children are definitely at risk.

Senator SPECTER. Could you give us a little more information, if you are willing to do so, about circumstances leading you to go to the shelter for abused women?

Ms. HICKMAN. A couple of months before I went there, my husband had started becoming both emotionally, mentally and physically abusive to Mariam. The mental abuse were things that undermined her self-esteem. He would hit her for spilling something.

Senator SPECTER. When you say the father was abusive to the child as to her self-esteem, what sort of things would he do?

Ms. HICKMAN. An example that comes to mind is, we bought her one of the Smurf hot wheels bikes, and it had a bunch of stickers that she could put on it, and she started sticking them on, and he told her, "You do not know how to do that, you're not putting them on straight," and he took the thing away from her and put the stickers on himself.

It was stupid because, it did not matter how they went on there. And that type of thing got to be pretty common. The morning that I took her out of the home, she had started crying because she bumped her elbow on the chair, and he hated it when she cried. He picked her up and threw her across the bars of her high chair, and was yelling at her, "If you don't shut up, I will hit you in the face."

Senator SPECTER. Did he ever do that?

Ms. HICKMAN. He did.

Senator SPECTER. In the face?

Ms. HICKMAN. Yes. I thought then that as soon as he was out of the house I would get her out.

So when he left, I said Mariam, we are going to stay somewhere for awhile where Daddy cannot hurt you anymore. And when we were at the shelter, about 2 days after we were there, I called him. I left a note before we left that said, "We'll be OK, but I can't let you do this to her." When she talked to him on the phone from the shelter a couple of days later, I do not know what he was saying to her, but I heard her, 3 year old, say to her dad, "I am comfortable here."

Senator SPECTER. Are you concerned about Mariam's physical well-being now?

Ms. HICKMAN. I am concerned about that and about her emotional well-being.

Senator SPECTER. Ms. Hickman. Were you abused yourself by your husband?

Ms. HICKMAN. As far as physically abused, there was a period of a couple of times during only 1 month I had a lot of mental abuse, which was probably akin to brain washing.

Senator SPECTER. Well, it is a very tragic situation. We will pursue it. We will do what we can to help.

I would like you to stay at the witness table, Mrs. Hickman. I would like to ask Mr. Peter Pfund, the Assistant Legal Adviser for Private International Law, accompanied by Mr. Carmen DiPlacido, Bureau of Counsular Affairs, U.S. Department of State, to come up.

Gentlemen, we welcome you here on rather short notice. We very much appreciate the cooperation of your Department in our efforts with regard to Mariam Zamani.

Gentlemen, would you identify yourselves, and proceed.

STATEMENTS OF PETER H. PFUND, ASSISTANT LEGAL ADVISER FOR PRIVATE INTERNATIONAL LAW, OFFICE OF THE LEGAL ADVISER, ACCOMPANIED BY CARMEN A. DiPLACIDO, DIRECTOR OF THE OFFICE OF CITIZENS CONSULAR SERVICES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. PFUND. Thank you, Mr. Chairman. I am Peter H. Pfund. I am Assistant Legal Adviser for Private International Law in the Office of the Legal Adviser of the State Department. To my right is Mr. Carmen DiPlacido of the Department's Bureau of Consular Affairs.

I am pleased to have this opportunity to make some brief comments to the subcommittee on the assistance that the State Department can provide in connection with international child abductions and on a new international agreement that promises to provide a more effective means for obtaining the return of internationally abducted children.

Let me begin by emphasizing the Department's serious concern about the problems of international child abduction related to custody disputes. Such child abductions are frequently emotionally devastating for the children and parents involved. The Department has worked to help resolve the problem both through preventive education developed with the National Center for Missing and Exploited Children and by international agreement.

Mr. Chairman, I anticipated that my statement would be at the beginning of this hearing to set the scene. After Ms. Hickman's statement my remarks will seem rather general in the context of the particular tragic situation of her daughter Mariam. I would like nonetheless to give the broad picture.

Senator SPECTER. That is fine, Mr. Pfund. I appreciate that. I thought it would be somewhat more useful to hear the specifics first. We will understand the fact that it is general, not anticipating her earlier testimony.

Mr. PFUND. Thank you.

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The Department of State and U.S. consular officers at embassies and consulates abroad receive many requests for advice and assistance from distressed parents whose children have either been taken from the United States or prevented from returning to the United States by their other parent. Often the aggrieved parents have little or no idea about available courses of action. Many assume that the Department and its Foreign Service personnel have the authority to effect the return of their children to the United States.

The Department of State usually learns about a child abduction case from the left-behind parent or from Members of Congress. Grandparents, courts, private attorneys, interest groups, child welfare agencies, foreign officials, State authorities and the media also continue to approach the Department for information or assistance regarding international child abduction cases. Depending on the nature of the problem, such inquiries are routed to the Office of Citizens Consular Services [CCS] or to the Office of Passport Services, both of which are within the State Department's Bureau of Consular Affairs.

In addition, similar inquiries are addressed to American embassies and consulates abroad. The cases involve abductions both to or from the United States. Information flyers describing the assistance that the Office of Citizens Consular Services can provide in such cases are annexed to this statement.

While the Department of State is fully aware of the distress a deprived parent experiences in such circumstances, it is not in a position to provide the sort of assistance most parents desire. The type of assistance that the Department and its posts abroad can render with regard to an abducted child located abroad is quite restricted.

Basically, the Department's role is confined to: (1) Helping parents locate children missing abroad; (2) monitoring and reporting on the welfare of the children upon the request of a parent; (3) furnishing general information short of legal advice concerning foreign and domestic laws and procedures which might be of assistance in obtaining the return of the child; (4) providing lists of foreign attorneys who have expressed a willingness to represent American citizens; (5) alerting local authorities or social service agencies if it appears that a child is being abused or neglected, and (6) imposing passport controls in appropriate cases.

The Department cannot: (1) Provide legal advice; (2) cause its officers to take custody of a child; (3) force a child to be returned to the United States; (4) provide assistance or refuge to parents attempting to violate local law; or (5) initiate or attempt to influence child custody proceedings in foreign courts.

The limitations on Department of State action derive from the general constraints inherent in the notion of national sovereignty. Consular officers must operate in accordance with the laws of the country to which they are accredited.

Moreover, American court orders and decrees in child custody disputes are not enforceable with regard to persons and authorities outside the United States in the same way as they are with regard to persons and authorities within this country. Foreign countries exercise independent jurisdiction based upon the child's presence

in their territory and will decide who is entitled to physical and legal custody pursuant to their own domestic relations laws.

However, foreign courts and authorities, in custody proceedings based on local law, may consider American custody decrees as evidence and may, in some cases, recognize and enforce them on the basis of comity.

The Federal Parental Kidnaping Prevention Act provides, among other things, a useful mechanism for combating child abduction through the Unlawful Flight To Avoid Prosecution [UFAP] warrant. An outstanding UFAP warrant issued for a parent who has abducted a child from the United States enables Passport Services to revoke the U.S. citizen abductor's U.S. passport or refrain from issuing a new passport.

However, even if the abductor is not a U.S. citizen the existence of the warrant serves to demonstrate to foreign authorities that the abduction of the child is considered a crime in the U.S. State in which the child is habitually resident. Abductors for whom such a warrant has been issued who plan some day to return to the United States are thus likely at least to consider returning the child.

How many children habitually resident in the United States have been abducted abroad by a parent? There are 1,769 child abduction cases known to the Department and considered unresolved on the basis of information available to it. This reflects an additional 1,051 cases, or 146 percent increase in the last 2 years since May 1983, when the Department had the opportunity of testifying before this subcommittee on this subject.

The Department assumes that the figure increased because of the growing number of parents who are abducting their children in custodial disputes. The Department has prepared an exhibit for the benefit of the members of the subcommittee which reflects the geographical breakdown of cases as well as specific congressional interest.

The role of the Department's Office of Passport Services in child custody disputes is limited. While the Department often can assist a custodial parent by refusing to issue a passport for a child, it has no authority actually to prohibit or otherwise to control the travel of American citizens.

The Department recently amended its regulation governing the issuance of passports in cases involving child custody disputes to reflect more clearly the limited conditions under which it can use the passport authority to assist parents. An information flyer detailing the assistance which can be provided is annexed to this statement.

In the belief that international parental abductions are harmful to the children involved, and that this form of parental self-help should not be condoned and should not result in legal advantage to the abducting parent in the country to which the child is abducted, the Hague Conference on Private International Law, with active U.S. participation, adopted the Hague Convention on the Civil Aspects of International Child Abduction at its 14th session, in October 1980.

The United States signed the convention on December 23, 1981, after the American Bar Association had endorsed it for U.S. signa-

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ture and ratification. The convention basically provides that, upon application by an aggrieved parent to the central authority of the country to which the child has been taken, a wrongfully removed child is to be promptly returned to the country of its habitual residence, thus restoring the status quo before the abduction took place.

In order to give aggrieved parents a single official place in the country to which a child has been abducted to turn to for help, the convention requires that contracting States establish a national central authority responsible for receiving and processing return requests made pursuant to the convention.

In view of our Federal system, the U.S. Central Authority, which will probably be located in the Bureau of Consular Affairs in the State Department on a trial basis, will need to rely heavily on the cooperation of Federal and State welfare and other authorities to locate the child, facilitate efforts to effect its return and provide for foster care during return proceedings where necessary.

The convention is at present in force for France, Switzerland, Portugal, and Canada, and many other countries are planning to become parties to it. The Department's Office of Citizens Consular Services is aware that almost 900 of the 1,769 unresolved cases of parental child abduction from the United States were to countries which have shown an interest in the convention. This figure represents about half of the total number of unresolved parental abductions from the United States known to the Department.

As indicated earlier, the number of such abductions from the United States in the last 2 years has doubled the total for the previous 10-year period. In light of these figures and with the relatively recent increase in attention in the United States to interstate abductions, missing children and child abuse, the Hague convention in our view merits U.S. ratification.

The Department expects to submit the convention to the President for transmission to the Senate for advice and consent to ratification in the very near future. Draft Federal legislation to facilitate its implementation, drafted in consultation with the family law bar and representatives of State governments, will be submitted to the Office of Management and Budget for clearance prior to its introduction.

Favorable congressional action on the convention and Federal legislation would permit U.S. ratification and implementation of the convention and thereby the establishment of a treaty-governed procedure for the return of abducted children between the United States and other countries parties to the convention.

In conclusion, I would like to thank the subcommittee for this opportunity briefly to express the Department's views on this important issue.

I am prepared to attempt to respond to specific questions you may have about the convention.

[Information follows:]

PARENTAL CHILD ABDUCTION CASES REPORTED TO CCS* BY YEAR AND BY REGION

	73	74	75	76	77	78	79	80	81	82	83	84	85*	TOTAL
AF	0	0	0	0	2	0	14	12	12	26	24	11	1	102
ARA	0	0	1	7	7	15	29	14	53	102	112	81	55	476
EAP	0	0	0	0	2	0	3	39	11	5	51	28	24	163
EUR	1	0	2	4	53	50	64	75	87	164	139	104	28	771
NEA	0	0	2	1	3	3	2	15	30	43	61	68	29	257
	1	0	5	12	67	68	112	155	193	340	387	292	137	1769

* CCS - Citizens Consular Services
Department of State
7/19/85

AF - African Services Division
ARA - Inter-American Services Division
EAP - East Asia/Pacific Services Division
EUR - Europe and Canada Services Division
NEA - Near East/South Asia Services Division

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COUNTRY BY COUNTRY NUMERICAL BREAKDOWN OF PARENTAL CHILD ABDUCTIONS

(Lowest-Case Number to Highest Case Number)

ALGERIA	1
CHINA	1
GRENADA	1
CUBA	1
IRAQ	1
MARTINIQUE	1
MONTSERRAT	1
MOROCCO	1
NEPAL	1
NETHERLANDS ANTILLES	1
OMAN	1
ROMANIA	1
SENEGAL	1
SUDAN	1
ZIMBABWE	1
MALAYSIA	2
ANTIGUA	2
GHANA	2
INDONESIA	2
MALTA	2
TUNISIA	2
TONGA	2
BANGALADESH	3
BERMUDA	3
CYPRUS	3
DOMINICA	3
NICARAGUA	3
SRI LANKA	3
SYRIA	3
USSR	3
YEMEN	5
NEW ZEALAND	5
HONG KONG	5
PARAGUAY	5
ZAMBIA	5
TAIWAN	6
BAHAMAS	6
FINLAND	6
HUNGARY	6
URUGUAY	6
CZECHOSLOVAKIA	7
ICELAND	7
LIBERIA	7
LIBYA	7
UAE	7
SINGAPORE	8
AUSTRIA	8
GUYANA	8
EL SALVADOR	9
HONDURAS	9
KOREA	10
BELIZE	10
VENEZUELA	11
JAMAICA	11
BELGIUM	12
BOLIVIA	12

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KUWAIT	12
NORWAY	12
PORTUGAL	12
SWEDEN	12
TURKEY	14
S. AFRICA	15
PANAMA	15
IRELAND	15
PAKISTAN	16
PERU	16
DENMARK	16
GUATEMALA	16
HAITI	16
ARGENTINA	17
JERUSALEM	17
LEBANON	17
POLAND	17
THAILAND	17
CHILE	18
INDIA	18
YUGOSLAVIA	19
EGYPT	20
SAUDI ARABIA	21
COSTA RICA	22
TRINIDAD & TOBAGO	23
SWITZERLAND	23
JORDAN	23
IRAN	24
PHILIPPINES	24
DOMINICAN REPUBLIC	26
ISRAEL	26
SPAIN	26
BRAZIL	27
JAPAN	27
ECUADOR	29
COLOMBIA	29
AUSTRALIA	32
FRANCE	33
GREECE	40
NETHERLANDS	46
CANADA	51
NIGERIA	60
ITALY	72
UNITED KINGDOM	87
MEXICO	129
FRG	207

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ALPHABETICAL COUNTRY BREAKDOWN OF PARENTAL CHILD ABDUCTIONS

ALGERIA	1
ANTIGUA	2
ARGENTINA	17
AUSTRALIA	32
AUSTRIA	8
BAHAMAS	6
BANGALADESH	3
BELGIUM	12
BELIZE	10
BERMUDA	3
BOLIVIA	12
BRAZIL	27
CANADA	51
CHILE	18
CHINA	1
COLOMBIA	29
COSTA RICA	22
CUBA	1
CYPRUS	3
CZECHOSLOVAKIA	7
DENMARK	16
DOMINICA	3
DOMINICAN REPUBLIC	26
ECUADOR	29
EGYPT	20
EL SALVADOR	9
FINLAND	6
FRANCE	33
FRG	207
GHANA	2
GREECE	40
GRENADA	1
GUATEMALA	16
GUYANA	8
HAITI	16
HONDURAS	9
HONG KONG	5
HUNGARY	6
ICELAND	7
INDIA	18
INDONESIA	2
IRAN	24
IRAQ	1
IRELAND	15
ISRAEL	26
ITALY	72
JAMAICA	11
JAPAN	27
JERUSALEM	17
JORDAN	23
KOREA	10
KUWAIT	12
LEBANON	17
LIBERIA	7
LIBYA	7
MALAYSIA	1

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MALTA	2
MARTINIQUE	1
MEXICO	129
MONTSERRAT	1
MOROCCO	1
NEPAL	1
NETHERLANDS	46
NETHERLANDS ANTILLES	1
NEW ZEALAND	5
NICARAGUA	3
NIGERIA	60
NORWAY	12
OMAN	1
PAKISTAN	16
PANAMA	15
PARAGUAY	5
PERU	16
PHILIPPINES	29
POLAND	17
PORTUGAL	12
ROMANIA	1
S. APRICA	15
SAUDI ARABIA	21
SENEGAL	1
SINGAPORE	8
SPAIN	26
SRI LANKA	3
SUDAN	1
SWEDEN	12
SWITZERLAND	23
SYRIA	3
TAIWAN	6
THAILAND	17
TONGA	2
TRINIDAD & TOBAGO	23
TUNISIA	2
TURKEY	14
UAE	7
UNITED KINGDOM	87
URUGUAY	6
USSR	3
VENEZUELA	11
YEMEN	5
YUGOSLAVIA	19
ZAMBIA	5
ZIMBABWE	1

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CASES IN COUNTRIES INTERESTED IN THE CONVENTION

(Countries which voted to adopt Convention and Number of Cases)

COUNTRY	AMCIT CHILDREN ABDUCTED	
AUSTRALIA	32	
AUSTRIA	8	
BELGIUM	12	
CANADA	51	
CZECHOSLOVAKIA	7	
DENMARK	16	
FRANCE	33	
FRG	207	
GREECE	40	
IRELAND	15	
JAPAN	27	
LUXEMBOURG	0	
NETHERLANDS	46	
NORWAY	12	
PORTUGAL	12	
SPAIN	26	
SWEDEN	12	
SWITZERLAND	23	
UNITED KINGDOM	87	
VENEZUELA	11	
YUGOSLAVIA	19	
	SUBTOTAL	696

(Countries which abstained from voting for adoption of the Convention)

COUNTRY	AMCIT CHILDREN ABDUCTED	
EGYPT	20	
ISRAEL	26	
ITALY	72	
	SUBTOTAL	118

(Countries Present at the Hague Conference by Invitation)

ARGENTINA	17	
HOLY SEE	0	
SURINAM	0	
TURKEY	13	
BRAZIL	27	
HUNGARY	6	
MONACO	0	
MOROCCO	1	
USSR	3	
URUGUAY	6	
	SUBTOTAL	73

TOTAL CASES IN COUNTRIES INTERESTED IN CONVENTION	887

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DEPARTMENT OF STATE

Washington, D.C. 20520

ASSISTANCE IN CHILD CUSTODY DISPUTES

The Department of State receives many requests for advice and assistance from parents whose children have been taken from the United States or prevented from returning to the United States by the other parent. The Department and American Embassies and Consulates will do whatever they can to assist parents who are involved in child custody disputes; however, in most cases, the amount and type of assistance which the Department and its Foreign Service posts can offer is quite restricted. While the Department attempts to be of assistance in these matters, it cannot assume responsibility for any failure or inability to comply with the wishes of parents or guardians.

Consular Assistance

In child custody controversies in which children have been taken to another country or have been kept abroad by one parent, the Department of State, through its Foreign Service posts, can attempt to locate the children, monitor their welfare upon the request of a parent, make available general information about child custody laws and procedures, and furnish a list of attorneys in the foreign country should the parents indicate the need for legal advice or assistance. The Department can provide information about the welfare of a child under the age of eighteen to either parent, regardless of custody. If it appears that a child is being abused or neglected, Department officers can alert the local authorities or social service agencies.

Requests for Assistance

Persons who desire the Department's assistance in ascertaining the welfare or whereabouts of a child should send the following information to the Office of Citizens Consular Services (CA/OCS/CCS), Department of State, Washington, D.C. 20520, or to the U.S. Embassy or Consulate nearest the child's foreign residence: the full name of the child; the child's date and place of birth; passport data, if known; any available information about the child's departure from the United States or destination; and the names and, if possible, the addresses and telephone numbers of persons with whom the child travelled or is believed to be staying. Information concerning the provisions which have been made for custody of the child or a copy of any pertinent court decree is helpful. Parents should include telephone numbers where they can be reached if the Department or a Foreign Service post needs further details. The Office of Citizens Consular Services can be reached by telephone at (202) 632-3444.

Jurisdictional Limitations and Legal Assistance

If an amicable settlement of a child custody dispute cannot be worked out by the parents, the only recourse may be a court action in the country where the child is located. The law of the country in which the child is physically present, even temporarily, is controlling.

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Traditionally, the legal doctrine to which most countries have adhered is that the presence of a child within a particular country renders its courts competent to determine who should have custody of the child, regardless of any prior custody judgment issued by a court in another country. As a result, it is not unusual to find conflicting custody decisions in different jurisdictions. Courts in some countries have honored American custody decrees, but on the whole the outcome is unpredictable. The United States Government cannot force a foreign country to honor any American court order regulating custody or visitation rights.

Although U.S. consular officers can provide lists of attorneys in their consular districts, they cannot recommend any particular attorney, offer legal advice, represent U.S. citizens in custody or other hearings before foreign courts, or attempt to influence the outcome of those hearings.

Consular officers have no legal authority to obtain physical custody of children and return them to the United States. They cannot assist a parent in acquiring physical custody of a child illegally or by force or deception. Officers cannot help a parent to leave a foreign country with a child whose custody is disputed if the departure would violate a court order or the laws of the foreign country. They can, however, provide a passport for a U.S. citizen child whose custody is disputed if the child appears in person and they have not received a court order issued by the foreign government barring the child's departure from the country or awarding custody to someone other than the parent accompanying the child.

Passport Denial

When there is controversy concerning the custody of a minor, a passport-issuing office in the United States or abroad may deny issuance of a passport to the minor if it receives a court order from a court within the country in which passport services are sought. The court order must give custody of the child to the person who has requested that passport services be denied or must specifically forbid the child's departure from the country without the court's permission. Even in cases where a passport cannot be denied, parents can be notified if passport applications are submitted in the names of their children. Generally, after a passport has been issued, it cannot be revoked merely because the bearer has become involved in a child custody dispute.

Persons interested in passport denial may write to the Office of Citizenship Appeals and Legal Assistance (PPT/C), Department of State, Washington, D.C. 20520.

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United States Department of State

Washington, D.C. 20520

LOCATING A MISSING CHILD ABROAD

Office of Citizens Consular Services
(202) 632-3666

The resolution of child custody disputes is a private legal matter in which the Department of State may not property intervene. Our role is limited to questions concerning the welfare and whereabouts of the American citizen children abducted by one parent and transported to a foreign jurisdiction and the issuance of passports to children who are the subject of custody disputes.

Consular Welfare/Whereabouts Search

When a child has been abducted by a parent, the American embassy or consulate can conduct a welfare/whereabouts check for the child. Under this procedure, the consular officer attempts to locate the child and ascertain the child's state of health. The consular officer will endeavor to either personally interview the child or enlist the services of local authorities to determine the child's health and welfare. The consular officer may begin by contacting local authorities to verify the child's entry and/or residence in the country. When the child is located, the consular officer may telephone the parent/guardian abroad or speak directly directly to the child. A personal visit to the child by the consular officer may be requested by the parent in the United States. If difficulty ensues when the parent/guardian refuses the consular officer access to the child, local officials, family services agencies or police authorities may be requested to determine the child's well-being. A report of the child's condition is then relayed to the requesting parent. If the welfare/whereabouts check convinces the consular officer that the child may have been abused or if evidence provided by the parent in the U.S. such as police reports, medical records or school records supports allegations of child abuse, the consular officer will make strong representations to the local authorities for a thorough investigation and, if necessary, request the removal of the child into the protective custody of the local courts or child welfare service. Consular officers cannot, however, take custody or force the return of the child to the deprived parent in the United States.

Self-Help Actions by Deprived Parents

There are certain actions which the deprived parent can take in the United States to secure the return of the abducted child. The following discussion of some of the actions available to the deprived parent is based upon the American Bar Association's Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law, Hoff, Schulman and Volenik, Legal Services Corporation, 1982 and Interstate and International Child Custody Disputes, A Monograph, the Child Custody Project, Patricia M. Hoff, Esq. Director, American Bar Association Fund for Public Education, Washington, D.C., 1982.

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A. UFAP Warrants

Every effort should be made to obtain a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant in the name of both the abducting parent and the missing child in accordance with the Parental Kidnapping Prevention Act (PKPA) of 1980. Enclosed is information regarding the PKPA and the assistance which the Federal Bureau of Investigation (FBI) and the United States Attorney's Office are able to provide to deprived parents under the Act.

B. Mail Covers

Contact your local post office to make arrangements for a mail cover on any addresses to which the abductor may be writing in the United States.

C. Actions Against Agents or Accomplices to the Abduction

Actions can be taken against agents, friends, relatives or attorneys of the abductor who assisted in the abduction or know the whereabouts of the missing child in some states. The American Bar Association's Child Custody Project Monograph, cited above details methods for locating missing children such as tort actions and local criminal actions against accomplices to the abduction.

D. Monitoring Requests for Copies of the Child's School Record

Contact the Family Educational Rights and Privacy Act Office of the U.S. Department of Health and Human Services, 4512 Switzer Bldg. Washington, D.C. 20202, (202) 245-0233 to obtain information regarding any requests made to your child's school for transfer of records.

E. Parent's Associations and other Organizations

Child Find, Inc., P.O. Box 277, New Paltz, New York 12561-0277, (914) 255-1848 is a non-profit corporation whose objective is to help parent and children victims of child snatching by establishing a central national registration point for matching separated children and their searching parents. Lists of local parent's associations are included in the ABA materials cited above.

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United States Department of State

Washington, D.C. 20520

ENFORCING A CHILD CUSTODY DECREE

A child custody decree issued in a state in the United States generally has no force or effect in a foreign country. There is not in force between the United States and any foreign state any treaty or other agreement whereby the courts of either country are required to enforce child custody judgments rendered by courts of the other country. However, it is possible that a decree issued in the United States might be recognized in a foreign country on the basis of reciprocity, citing the international clause of the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJA has been adopted by all states except Massachusetts, Texas and Puerto Rico.

Section 23 of the UCCJA expressly provides that the general policies of the Act extend to the international area. It further provides that custody decrees made in other countries by appropriate judicial or administrative authorities will be recognized and enforced in this country, provided reasonable notice and an opportunity to be heard were given to the affected persons in the foreign custody proceedings. The only states that have not included this section of the UCCJA in their statutes are Missouri, New Mexico, Ohio and South Dakota.

As a matter of public policy, UCCJA courts find little difference between international and interstate child abductions for purposes of enforcing a decree and ordering the return of a child who has been abducted or retained. And, while the Federal Parental Kidnapping Prevention Act does not by its terms impose a duty on state courts to enforce decrees made by foreign courts, there is nothing in that law which conflicts with, or which would interfere with, the UCCJA's mandate of recognition and enforcement of certain foreign custody orders. Indeed, international comity would be consistent with the thrust of the federal act, and in harmony with ongoing efforts by the United States to ratify an international child abduction treaty (The Hague Convention of the Civil Aspects of International Child Abduction) An attorney in the United States representing a foreign client who is seeking to enforce a custody determination issued by a foreign tribunal should become acquainted with the growing body of case law which evidences the willingness on the part of state courts in the United States to honor foreign decrees pursuant to the UCCJA. A summary of numerous of the international custody cases under the UCCJA can be found in Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law, Hoff, Schulman, and Volenik, Legal Services Corporation, 1982, 10-2 supra from which this paragraph is an excerpt.

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The topic of "Enforcement of Foreign Judgments" is treated in Chapter XIV, Section 14, of the Digest of International Law by Marjorie M. Whiteman, (U.S. Government Printing Office, 1968), volume 6, pages 225-253. An authoritative discussion of recognition of foreign-country judgments in the United States is contained in Section 98 of the Restatement of Conflict of Laws, Second (St. Paul, Minnesota, American Law Institute publication, 1971), volume 1, pages 298-302. General information on recognition of judgments in foreign countries may be found in the foreign law digest volume of Martindale-Hubbell.

In order to request assistance from the foreign judicial authorities, a parent in the U.S. must retain the services of a private attorney in the foreign country who will present before the foreign court the U.S. custody decree, a copy of the Uniform Child Custody Jurisdiction Act with implementing state legislation, and a formal letter (letter rogatory) from the court in the U.S. requesting enforcement of the decree, accompanied by an offer of reciprocity in similar cases. All of these documents must be translated into the official language of that country and properly authenticated.

California has established such reciprocity with France and Australia. For more information on how states can establish similar procedures contact Gloria DeHart, Deputy Attorney General of the State of California, 6000 State Building, 350 McAllister Street, San Francisco, California 94102. For cases in which foreign tribunals have been asked to return children to the U.S. pursuant to decrees made by courts in this country, see Crone v. Duggan, 1 Fam. L. Rep. 2092 (Rhodesia-Virginia, 1974), and Re C, 2 All ER 230 (CA), 5 Fam. L. Rep. 2248 (England-California, 1977). If a foreign court refuses to enforce the U.S. child custody decree, the parent must initiate new custody proceedings in the foreign state through the aid of an attorney in the foreign country in order to gain custody of the child in that country.

A list of attorneys practicing in foreign countries may be obtained from the Office of Citizens Consular Services, Department of State, Room 4817, Washington, D.C. 20520.

May 1983

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Passport Services

BUREAU OF CONSULAR AFFAIRS
U.S. DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

ISSUANCE AND DENIAL OF PASSPORTS

TO MINOR CHILDREN

Passport Services frequently is asked by parents or guardians not to issue passports to minor children, or to revoke passports previously issued to such children. This Notice provides basic information on the policies and procedures applicable to such cases.

RESPONSIBILITY OF THE DEPARTMENT OF STATE

Every effort is made to assist parents. However, the Department cannot assume any legal responsibility if it is unable to carry out the wishes of parents or guardians in the issuance or denial of a passport to a minor. The laws governing parental rights vary from state to state and from country to country, and parents or guardians ultimately must look to the courts of those countries to enforce their rights.

DEFINITION OF A MINOR

Passport regulations define a minor as an unmarried person under 18 years of age. For that reason, parental objections do not provide a basis for denying a passport to a person 18 years or over.

PASSPORT APPLICATION PROCEDURES

Place of Application. Applications must be made in the country within which the minor is located at the time of application.

Who Must Execute the Application. A parent or legal guardian must apply on behalf of a minor under the age of 13 years. Any other person making application on behalf of a minor must present written authorization from the parent or guardian. The minor may be required to appear before the official accepting the application if necessary to establish the minor's identity or confirm the minor's presence in the country where the application is made.

Minors 13 years of age or over should execute their own applications unless the accepting official determines that the circumstances warrant execution of the application by a parent or guardian. Such minors may be required to submit the written consent of a parent or guardian before a passport is issued.

PROCEDURES FOR REQUESTING DENIAL OF A PASSPORT TO A MINOR

Form and Content of Denial Requests. Requests must be made in writing. At a minimum, the request must provide the complete name, date, and place of birth of the minor, and the minor's relationship to the person requesting that a passport not be issued.

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Where to Send Passport Denial Requests. Requests should be addressed to the Office of Citizenship Appeals and Legal Assistance (PPT/C), Department of State, Washington, D.C. 20520, directly or through the nearest Passport Agency in the United States. If the minor is abroad, the request should be sent to the nearest American Embassy or consulate.

Action Taken Upon Receipt of Denial Requests. Upon receipt, a notice is entered in the name of the minor child so that the objecting parent or guardian can be notified if an application is received in the minor's name. The objecting parent will receive confirmation of this in writing. If a search of the files reveals that the minor already has been issued a passport, a parent or guardian will be informed and advised concerning any assistance which can be provided in such cases.

DURATION AND GEOGRAPHIC APPLICABILITY OF DENIAL NOTICES

Duration of Notice. Notices recording objections to the issuance of passports to minors remain in effect until the minors become 18 years of age, unless withdrawn by the objecting parent or guardian before that date.

Applicability of Notice. Notices entered in the United States are applicable only within the limits of the United States. If a notice requests the denial of a passport to a child residing abroad, the notice will be applicable only within the country in which the child is located.

DENIAL OF PASSPORTS WHEN CUSTODY OF MINOR IS IN DISPUTE

Presumption as to Parental Consent. Absent prior notification to the contrary, an application executed by or with the consent of one parent is presumed to have the consent of the other parent. Unless there has been a judicial award of custody to the objecting parent or a restraining order prohibiting the child's departure from the particular jurisdiction, the parent's objection will not prevent issuance of a passport which was applied for with the consent of the other parent. Nevertheless, a notice can still be entered so that the objecting parent can be notified if a passport application is executed.

Denial Requests Where One Parent Has Been Awarded Custody. A request that a minor not be issued a passport without the consent of the custodial parent or legal guardian must be accompanied by a copy of the court order awarding custody of the minor to that parent or guardian. Passport Services will also deny a passport to a minor at the written request of a non-custodial parent if that parent submits a copy of a court order which prohibits the minor's departure from the particular jurisdiction. The court order must have been issued or recognized by a court in the country in which the minor is residing.

Conflicting Court Orders as to Custody of a Minor. In such cases, Passport Services will not attempt to resolve the conflict between court orders. The parent objecting to the issuance of the passport may be given a limited time in which to resolve the conflict through the courts or by agreement of the parties, otherwise, the passport application of the minor will be approved.

Enforcement of Visitation Rights. Except as noted, whether or not a passport will be issued to a minor is determined by whether or not the objecting parent has been awarded legal custody of the minor. Unless specifically provided for in a court order, visitation rights awarded to a non-custodial parent will not be enforced by either the issuance or denial of a passport to a minor.

Denial Requests in Country Other Than One in Which Custody Was Awarded. It is the Department's policy that no extraterritorial validity will be given to a court order involving custody of a minor. For that reason, it is not possible to deny a passport to a minor who is outside the country whose courts awarded custody of the minor to the objecting parent.

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REVOCATION OF PASSPORTS ISSUED TO MINORS

Parental objections, or court orders or decrees concerning custody do not provide a basis under passport regulations for the revocation of passports. However, the regulations do not prevent the objecting parent or guardian from attempting to recover possession of a minor's passport, either directly or through order of a court.

PASSPORT REVOCATION TO ENFORCE NON-CUSTODY PROVISIONS OF COURT ORDERS

Warrants of arrest, injunctions, or contempt of court citations issued for the failure of a parent or guardian to abide by the provisions of custody orders are enforceable by revocation of a passport only to the extent that they would be enforced against the violators by federal felony action in the Courts of the United States.

OTHER SERVICES - WELFARE/WHEREABOUTS OF MINORS OUTSIDE THE UNITED STATES

Frequently, a parent or legal guardian will ask the assistance of the Department in determining the whereabouts or welfare of a minor child who is outside of the United States. Such requests should be made in writing and addressed to the Office of Citizens Consular Services, Overseas Citizens Services, Department of State, Washington, D.C. 20520. All requests should include the telephone number of the writer in case he or she must be contacted for further information. Upon receipt of such a request, an effort will be made to establish the minor's location or welfare and to provide information that may help the concerned parent.

The Office of Citizens Consular Services has available on request a Notice entitled "Assistance in Child Custody Disputes" which contains more information about welfare/whereabouts services offered by that office.

Mr. PFUND. I would like to answer questions particularly about the convention and its implementation, whereas Mr. DiPlacido is better prepared to answer questions about the current procedures of the Department in handling international child abductions and any specific cases, such as the Hickman case.

Senator SPECTER. Let us turn for a moment or two to the subjects we have been covering, with your testimony, Mr. Pfund. What would the procedure be for dealing with this kind of case if the convention were ratified by the United States and in Iran?

Mr. PFUND. Well, if the United States and Iran were both parties to the convention, and the abduction took place after it had been entered into force in both countries, in the circumstances of the Hickman case, there would be a central authority in the Iranian Government which would receive Ms. Hickman's request for the return of Mariam to her custody.

In the Hickman case, in which it is my understanding that the custody order in favor of Ms. Hickman was issued subsequent to the actual taking of the child out of the country, the convention would apply, despite the fact that at the time of the abduction, or the wrongful taking, there was no order placing Mariam in her legal custody.

Senator SPECTER. Mr. Pfund, would the international convention allow for precedents for U.S. law, full faith and credit, so to speak, as contrasted as to what an Iranian court might do in the first instance?

Mr. PFUND. I understand your question. The Hague convention is rather sophisticated in its simplicity. It is not seeking to require the enforcement of foreign custody decrees. In other words, it would not seek to have Iranian authorities in this case recognize the U.S. custody decree. Rather, it is based on the idea that a wrongful taking is bad for the child, and it is improper for the ab-

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ducting parent to obtain any legal advantage in the custody dispute by having abducted the child. Its purpose is to effect the return of the child promptly before it becomes assimilated in a new country. It seeks simply to return the parties to the status quo before the abduction took place.

Senator SPECTER. Could the Iranian authorities, if they chose, disregard that international compact?

Mr. PFUND. The Iranian government was not present at the negotiations and the preparatory stages of work that ultimately produced this convention. They are not a member state of the Hague conference.

Senator SPECTER. I am presuming, for the purpose of this analysis, as you said at the outset, that both nations were parties to it. The question then arises, which I am posing to you now, in light of your earlier, and obviously accurate statement about national soverignty, that assuming Iran and the United States were parties, if they didn't abide by it, how could we enforce it?

Mr. PFUND. The return obligation is absolute, but subject to certain exceptions expressly set out in the convention.

Senator SPECTER. Let us assume that the absolute requirement for return was present. What would the mechanism, if any, be for enforcement?

Mr. PFUND. The basic operative premise on which a country is assumed to become a party to a convention of this kind, namely the intention to abide by what is a treaty obligation. However, I do not believe that this type of case would ever become the subject of a claim before the International Court of Justice that a country had failed to observe its treaty obligations in a given case.

I think that any turndown would be couched in terms of one of the exceptions to the return obligations. I am sure that lawyers in Iran, and in the United States for that matter, are going to be creative enough at least to fashion some arguments.

The hope is that the courts or other authorities who hear this kind of return request will bear in mind that the exceptions to the return obligations were intended to be very narrowly construed, and were meant to be applied in exceptional circumstances and not as a the general rule.

Senator SPECTER. I understand the difficulties, and in proposing the question, if Iran will not comply, there is no way we can enforce it in the way we do in the United States the thought in my mind is whether or not it may be useful in trying to structure some decisionmaking procedure like the International Court of Justice, to at least get by the layer of some excuse under the guise of an exception; and, of course, even if there is international agreements.

Let us turn to you, Mr. DiPlacido, if we can, and deal with what procedures are available for return of young Mariam.

STATEMENT OF CARMEN A. DiPLACIDO

Mr. DIPLACIDO. Let me first, Mr. Chairman, give you an idea of what the State Department has done in this case and what the Department can do in similar cases. I think that might be helpful in answering your question. Obviously, we are rather limited.

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First, when parents are aware of the possibility that a child may be abducted and taken overseas, just as Ms. Hickman has done, she has contacted the Department's Bureau of Consular Affairs, Passport Services, and asked that a lookout be placed in the child's name so that a passport could not be issued and the child could not be taken overseas.

That does not necessarily always work, because as in Ms. Hickman's case, her child most likely departed the United States on an Iranian passport, the father obviously proved that the child was an Iranian national.

Moreover, my office in particular has a limited role in assisting parents. It is usually one that is after the fact, that being that once we discover that a child has been taken overseas, we can ascertain the child's whereabouts and ask our consular officers to determine the welfare of the child so we can report it to the inquiring parent. We can also provide basic information regarding child custody the procedures and practices in the country to which the child is taken.

We can provide a list of attorneys in the foreign country who have expressed an interest in handling such cases. We can give the parent a general idea of what the legal situation would be in that country.

Senator SPECTER. Mr. DiPlacido, what steps has your office taken on this matter?

Mr. DIPLACIDO. My office provides information to the parent who has inquired about the abduction. We outline possible options to pursue. One of the options is placing a passport lookout in the child's name. This was done for Ms. Hickman upon her request.

Senator SPECTER. That was done by your Department?

Mr. DIPLACIDO. Yes, sir, it was done.

Senator SPECTER. When was that done?

Mr. DIPLACIDO. That was done on December 13.

Senator SPECTER. And what else has your Department been able to do?

Mr. DIPLACIDO. Let me correct myself. The lookout was placed on December 11.

Senator SPECTER. What else has your Department done?

Mr. DIPLACIDO. We have written to Ms. Hickman, providing information on what we can and cannot do; offering our services to her, including, informing her that, as you know, we do have a protecting power in Iran. The Swiss handle our consular affairs for us, which includes assisting in emergency situations

Senator SPECTER. There is no direct contact between the United States, the Department of State, and the Iranian Government?

Mr. DIPLACIDO. That is correct.

Senator SPECTER. All diplomatic relations are severed at the moment?

Mr. DIPLACIDO. That is correct.

Senator SPECTER. So the Swiss act as intermediaries.

Mr. DIPLACIDO. They act as our agents in that regard. In any child custody or abduction case, as I mentioned, we could obtain for the inquiring parent information regarding the child's welfare and whereabouts.

Senator SPECTER. When were diplomatic relations severed between the United States and Iran?

Mr. DiPLACIDO. To be exact, sir, April 7, 1980.

Senator SPECTER. Right in the midst of the Iranian hostage issue.

Mr. DiPLACIDO. Yes, sir. That is correct.

Senator SPECTER. And discussions on the Iranian hostage issue were conducted through intermediaries at that time, the Swiss?

Mr. DiPLACIDO. Not the Swiss. I do not feel competent to answer that. But I do know in May of 1980 we negotiated an agreement with the Swiss to take care of our interests in Iran.

Senator SPECTER. What have we asked the Swiss to do in connection with this matter?

Mr. DiPLACIDO. At this time, sir, we have not asked at all. One of the reasons is that we leave that option to the inquiring parent, to ask us to do that, not only in Iran but in any other country. The reason we do not take the initiative is because sometimes the parent would not want us to make an inquiry about the child for reasons of their own.

Senator SPECTER. So you have not asked the Swiss Government to do anything on this matter?

Mr. DiPLACIDO. Not at this time.

Senator SPECTER. Ms. Hickman, would you like to inquire into that?

Mr. DiPLACIDO. Since Ms. Hickman is in Washington I would like to invite her to the Department to talk to her about this case.

Senator SPECTER. Are you available to do that today?

Mr. DiPLACIDO. Yes, sir. Also, next week we have a foreign service national employee coming from Iran, and she may want to discuss her situation with her as well.

Senator SPECTER. A foreign service national in Iran?

Mr. DiPLACIDO. Yes, sir. Foreign service nationals are hired overseas as employees of the mission. They are not U.S. nationals. In this case, this person was a former employee of our Embassy in Iran, and has been hired by the Swiss to work with them at the American interest section of the Swiss Embassy.

Senator SPECTER. Is that foreign service national employed by the Swiss government?

Mr. DiPLACIDO. Yes, sir.

Senator SPECTER. We do not have anything there.

Mr. DiPLACIDO. That is correct. The American interests section is part of the Swiss Embassy in Iran and is manned by Swiss Foreign Service officers.

Senator SPECTER. Ms. Hickman, did you know that this service was available to you?

Ms. HICKMAN. You mean to have the Swiss Embassy look into it?

Senator SPECTER. Well, that the State Department could help you on this matter?

Ms. HICKMAN. I just learned that a few days ago.

Senator SPECTER. One of the concerns I have, Mr. DiPlacido, is the lines of communication. There are things that may be possible through the Swiss, and the concern I have is that they were not initiated some time ago; that this was not made available to Ms. Hickman, say, in December or January, so we could have started this process some time ago.

Mr. DiPLACIDO. First, sir, as I mentioned earlier, the option, of course, is with her.

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Senator SPECTER. She has to know about the option before she can utilize it.

Mr. DIPLACIDO. That is correct. I understand that we first discovered that the child was in Iran when she told us. It was a month or so after the abduction occurred.

Senator SPECTER. Why was not some action taken at that time to inform Ms. Hickman about her opportunities to have your assistance through the Swiss intermediaries?

Mr. DIPLACIDO. I have no answer in that regard, sir. I believe that perhaps the officer handling the case did not feel that that would be a viable solution; especially when Ms. Hickman had at that time indicated to the officer that she was hoping to prepare a meeting with her husband outside of Iran. We gave her the advice that if she were to do so, she should contact us, and we would contact the post in the country in which they chose to meet, and we would ask the assistance of our post in that area. If anything, we could issue another passport for the child.

Senator SPECTER. Well, Mr. DiPlacido, I will not pursue that point beyond here. I do not think it is a satisfactory answer that that officer might not have thought it was the appropriate procedure. I understand why you are saying that, that you are speculating as to what he might or might not have thought, and that you are not in a position to say what he did think.

There has been a time lapse, and a substantial one, from December to July, where other actions might have been taken by the Swiss intermediaries. The best we can do at this point is to work on it today, and I know that Ms. Hickman appreciates your willingness to meet today.

What I would urge you to do is establish procedures so that it does not take a sequence of events like this, and a Senate subcommittee hearing for the State Department and a mother to be put together so that procedures can be established and understood.

In our society we have rules. We have to tell a murderer what his rights are so he knows and can exercise them. The least we can do is tell the mother of a child who has been abducted what her rights are. I will urge the State Department to put the procedures in effect in written form, so that it is routine in cases like this; a woman like Ms. Hickman should be advised as to what she can do to try to bring her daughter back.

Mr. DIPLACIDO. Sir, I appreciate what you are saying, and in fact, we do have written material that we provide to all parents who inquire in such matters. Further at all times Department officers inform the inquiring parent that we would ask at their request the nearest embassy or consulate to aid by performing what is called a welfare-whereabouts check for the child.

Senator SPECTER. Were those written materials made available to Ms. Hickman, if you know?

Mr. DIPLACIDO. Yes, sir, they were.

Senator SPECTER. I see you nodding in the negative, Ms. Hickman. What do you have to say about it?

Ms. HICKMAN. I do not remember getting any materials about it.

Mr. DIPLACIDO. Mr. Pfund has handed me a brochure prepared by the Missing Children Center concerning information that we

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provided to them as an aid to parents who have had their children abducted.

Senator SPECTER. Is there an additional brochure that the State Department provides to people like Ms. Hickman?

Mr. DIPLACIDO. Yes, sir. My office has information about what can and cannot be done in these cases.

Senator SPECTER. Do you have it there?

Mr. DIPLACIDO. Yes, sir.

Senator SPECTER. Did you receive anything like that, Ms. Hickman?

Ms. HICKMAN. This, I received 4 months ago, 4 months after she was gone.

Mr. DIPLACIDO. As Mr. Pfund has just reminded me, the same written materials that we distribute to the parents is also affixed to his written statement that he presented to the subcommittee yesterday.

Let me also add——

Senator SPECTER. Of course, Ms. Hickman has not seen that.

Mr. DIPLACIDO. Let me also add that we have 23 cases like Ms. Hickman's in Iran. Some have been continuing for years.

Senator SPECTER. Well, Mr. Pfund has testified that there are some 1,700 of these cases which are now pending. Will you please see to it that the parents in those cases know about the full range of your services?

Mr. DIPLACIDO. Yes, sir, I will. I can assure you that inquiring parents are informed of the full range of our limited services. If they have not already been provided the information, I will.

Senator SPECTER. Will you report back to the subcommittee about how many have been notified before this hearing, and let us know what action you have taken as to notifying the families?

Mr. DIPLACIDO. Yes, sir.

Senator SPECTER. We will not take any more time now, Mr. DiPlacido. I would appreciate it if the two of you sit down, and I will have staff persons present; Michael Russell, Esquire. I would like to know the specifics of what was provided, and as I say, no use worrying about spilled milk. Let us see what we can do about establishing matters for the future. That is always a concern.

I appreciate your concern, and I appreciate your being here, and I know that Ms. Hickman appreciates your help, so if we start off today, let us see if we cannot get this child returned.

Anybody have anything they would like to add?

Mr. DIPLACIDO. I would just like to say, I commend the committee as well for having such a hearing, because part of our efforts in our office is to educate parents, bar associations, courts, and lawyers handling such cases.

Senator SPECTER. I think that is a very useful aspect; and it is something that the media can do in spreading this information. But certainly the Department of State can let the message go out to parents who are in circumstances similar to Ms. Hickman that there is help here, and we will do what we can from Washington to get it out and let people throughout the country know if they inquire, that we are anxious to provide this kind of service.

Ms. Hickman.

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Ms. HICKMAN. I just wonder as I sit here, when there are hostages in Lebanon, for example, they do not wait for someone to ask for assistance to get them out. I am wondering why they needed to wait for me to ask, if someone knows a child is gone into a foreign country, why cannot they let me know, let that parent know, this is what we can do for you? Instead of waiting for a formal request. They did not wait for a formal request for anyone held in Lebanon, or the Americans held in Iran.

Senator SPECTER. Mr. DiPlacido, I have an answer for that, but I think you ought to have an opportunity to answer. She asked you bluntly why wait for her to ask? Why did not you take the initiative?

Mr. DIPLACIDO. Sir, first of all, one of the things the Department cannot do in a case like this is ask the foreign country to return the child. There are no treaties which permit such requests, which is why we support the Hague Convention described by Mr. Pfund. These are issues that cross international boundaries. There are private legal issues involved, the rights of the parents and the child. They are not political issues involving governments

In any case, as I described, our role is extremely limited, establishing communications between the parents, and determining the child's whereabouts and welfare. The purpose of providing the attorneys list is to assist parents to obtain local counsel. The physical location of the child determines which law controls the situation of the child. The abducted child may be, in fact, legally in the custody of the abducting parent in the foreign country. A U.S. custody decree may not have extra-territorial effect.

Senator SPECTER. Mr. DiPlacido, I do not agree with you that you cannot ask. I just do not agree that you cannot ask a foreign government. Maybe your request would have to go through an intermediary, but why cannot you ask? The most they can say is no. It may be that for this moment for Iran's own reasons they would want to make a good will gesture to the United States, and Ms. Hickman may be the beneficiary by having the return of her child.

Why do you say you cannot ask?

Mr. DIPLACIDO. Such issues involve domestic relations law. It is not a Federal political issue, but one which requires the private adjudication of parental rights. The fact remains that the Iranian Government may look at this as a domestic legal dispute involving the custodial rights of the father.

Senator SPECTER. Well, Mr. DiPlacido, I can understand that they may look at it as a domestic issue, but again, I would have to disagree with you when you say it is not a Federal issue. I view it as a Federal political issue.

A woman from the United States living in Pennsylvania who has a child who has been abducted, and I asked the State Department, the Secretary of State, the President, to bring the child back. I know we cannot land an expeditionary force, and I know we cannot seek extraditions, but we can ask, and I think it is important that we ask.

We have to ask of the Swiss, let us ask of the Swiss. We may get a yes answer, and we take yes for an answer; but I do not agree with you that we should not ask. I do not agree with you that it is not a Federal political issue.

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Mr. PFUND. Senator, if I may, your proposal does raise a question when we consider the numbers of cases of abductions of children from the United States beyond this case. We are talking about 1,700 or 1,800 unresolved cases, and about 1,000 cases that have been added since May 1983, to those already known to the Department 2 years ago. I think the Department has to bear in mind that foreign relations at a political level deal with other matters than individuals. Moreover, there are a lot of children that we do not know about that are abducted to this country by American parents and alien resident parents. I do not know if the States or Members of Congress would welcome it if the State Department, upon receiving corresponding political return requests from foreign governments, were to undertake efforts in this country to try to achieve the return of such children to foreign countries as a political matter.

Senator SPECTER. Mr. Pfund, you talk about a political matter; you talk about a Federal political matter. What you are saying is that the U.S. Government makes the request of the Iranian Government for some action to be taken, and I believe that that is a fair request to make.

I only speak as one Senator, but I am confident that if I circulated the sense of the Senate resolution that I could get 100 signatures from the Senators in joining me to say, at least ask to have her returned.

Ms. Hickman asked a very real and poignant question when she says, why does there have to be the pressure, national, international notoriety to have these requests made?

We have a lot of grievances with the Iranian Government. One of the grievances is that the Iranians hold two hijackers who murdered two AID officers in December, and I want to know what has happened to their prosecution.

We have three hijackers to bring to justice in the courts of the United States, in Lebanon, and it is true that we do not focus our attention on these matters unless there is some overriding interest or concern. What we have to do is regularize procedures so you do not have to have a subcommittee meeting for Ms. Hickman to tell her story.

It is hard to attract the attention of the U.S. Senate, hard to attract the attention of the State Department, and I think we have to have regularized procedures. There ought to be a document that goes to her saying "this is what you can do," and I believe we should have a document as a matter of course, even though there are 1,700 of them that says to those countries, please return this child. We cannot tell them, but we can sure ask them, and I think we ought to do that.

Ms. HICKMAN. I do not think—you mentioned the fact that it was a domestic abduction, and I do not think we asked the Department to get into domestic abductions. There are State laws that should take care of that. As far as it not being a political issue, we think it is a political issue, because my husband had become very anti-American, and supported the government revolution in Iran.

Senator SPECTER. It does not have to rise to that level to be a political issue. A political issue is defined as an issue which is important to a nation to make a request to another nation for action

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beyond an international compact or beyond some established rule of international law, where we ask, as a matter of expression, for another nation to intervene to help us out.

A 4-year-old child is involved, and that is an important issue by any definition, and Mr. DiPlacido and Mr. Pfund are operating within the confines of their own Department. They have a lot of restrictions on them, and they have a big work load, and they have a lot they have to do, and they have good reasons for their proceeding as they do; but they are influenced by what the Senate does, and this is one Senator speaking about what I think ought to be done in this case, and it ought to be regularized, and I will pursue it beyond this with Secretary Shultz as to what we may do. We probably should have concluded 15 minutes ago, but I think it is good to ask.

Let us pursue the matter now, to make the request, at least with this Senator's view, that we ought to regularize procedures for telling other involved parents as to what could be done, to the extent that you have resources to make the request.

I sit on the Appropriations Subcommittee for the State Department, and I believe that we would be willing to assist you on funding on matters like this; to give you the resources to carry out this kind of thing.

Well, I will not ask if anybody has anything else to say. I will thank you very much.

Ms. Hickman, if you will remain, we will arrange after this hearing is over for you to talk to Mr. DiPlacido.

I would like now to call on the next panel of our hearing, Ms. Nancy Polikoff, and also Mr. Wayne Dixon, a private consultant, a recognized expert in this field, and an officer of child support enforcement.

We thank you for joining us here. We thought this would be a related field, and we look forward to your testimony. Let us begin with you, Ms. Polikoff.

STATEMENT OF NANCY D. POLIKOFF, STAFF ATTORNEY AND DIRECTOR, NATIONAL PROJECT ON CHILD SUPPORT AND CHILD CUSTODY, WOMEN'S LEGAL DEFENSE FUND, WASHINGTON, DC

Ms. POLIKOFF. Thank you, Chairman Specter. A full, more comprehensive written testimony will be filed within a 2-week period.

The child support problem has two equally important components: inadequate amounts of support and insufficient enforcement of those amounts that are ordered.

While recent Census Bureau data confirms how low child support awards are, perhaps my favorite example of the inequities is the Colorado study which showed that two-thirds of the fathers studied were ordered to pay less per month for child support than they paid on monthly car loan payments.

With respect to enforcement, nationally about half of all mothers receive the full amount of support ordered; in many areas the percentage is considerably lower. Overall, insufficient support contributes to the decline in the standard of living for women and children upon divorce, a decline which one study found to be 73 percent.

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The Child Support Enforcement Amendments of 1984 will go a long way toward improving the enforcement aspect of the system. We urge Congress to oversee the State implementation of this important legislation, as to achieve compliance each State must enact legislation and hundreds of administrative agencies and court systems must drastically alter their procedures.

The key to effective support enforcement contained in the legislation is the provision for automatic wage withholding if an obligor falls behind by more than 1 month's worth of payments. We are especially mindful that enforcement of support will not be achieved unless the interstate procedures operate smoothly and unless the limited defenses to nonpayment of support are maintained and indeed strengthened.

I would like to turn now to an extremely important aspect of child support awards: The erosion of the amount of child support over time.

In almost every State, a custodial parent seeking an increase in child support must take the initiative to petition the court on behalf of herself and her children. In practical terms, this means that today there are mothers raising teenage children who receive the same amount of support that was ordered in the early 1970's when those children were toddlers. Mothers often do not seek modification of their support orders because they cannot afford to hire attorneys or take time off from work, because they do not want to antagonize the father of their children and jeopardize that relationship, or because they fear counterclaims which will produce protracted litigation.

The cost to the family is severe. An award of child support which was probably inadequate when issued many years ago now bears no relation to the increased costs of raising older children or of meeting the demands of inflation.

Attached to this statement is a Minnesota statute which stands as an example to the Nation of a fair and effective method of beginning to address this problem. Briefly, the statute provides that child support be automatically increased every 2 years according to a cost of living index set in the original order.

The statute gives the noncustodial parent the right to a hearing to argue that the increase should not take place, but it puts the burden on him to request the hearing. Essentially, it creates a presumption that child support will be increased every 2 years.

There are a number of ways States could provide for such automatic cost-of-living adjustments. Congress need not adopt one model just as it has not adopted one guidelines for determining the amount of the initial award. But we do urge Congress to mandate, as an amendment to existing child support statutes, that each State enact legislation creating a presumption of a periodic automatic cost of living adjustment.

While this will not solve the entire problem of low child support awards, it will be a decisive step in the direction of assuring adequate support over time for our Nation's children.

Senator SPECTER. How about her?

Ms. POLIKOFF. She does not have to do it, because the order provides that every 2 years there will be adjustments according to the cost of living.

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Senator SPECTER. The point I am raising is that some of the defendants are women.

Ms. POLIKOFF. The obligor would be.

[Prepared statement follows:]

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Prepared Statement of Nancy Polikoff

Chairman Specter and members of the Subcommittee on Juvenile Justice of the Senate Judiciary Committee, my name is Nancy Polikoff and I am staff attorney and director of the National Project on Child Custody and Child Support of the Women's Legal Defense Fund. We appreciate this opportunity to testify on the critical issue of child support awards and enforcement of those awards.

The Women's Legal Defense Fund is a private, non-profit membership organization founded in 1971 and incorporated in the District of Columbia. Our Child Support Project prepares materials for public education, provides technical assistance to attorneys, engages in nationwide fact gathering, writes articles and responds to media requests for information, analyzes current and proposed legislation, and provides representation at the appellate level, both as counsel of record and as amicus curiae. WLDF provided testimony on child support before the Finance Committee of the United States Senate, was part of a coalition which worked closely with Congressional staff on the passage of the Child Support Amendments of 1984, and submitted comments on proposed regulations of the Department of Health and Human Services implementing that federal law. WLDF staff have both spoken and published on child support issues.

On a state level, WLDF has participated as amicus curiae before state appellate courts in cases involving child support law, has testified before the District of Columbia City Council on implementation of federal law, has provided written materials to several state Child Support Commissions, has provided pro bono legal representation in precedent setting cases, and has worked with other local organizations concerned with child support issues.

We understand that this Subcommittee is just beginning its inquiry into what further role Congress should have in addressing

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the child support problem, and we are pleased to present our views concerning future directions.

CONGRESSIONAL OVERSIGHT OF STATE IMPLEMENTATION OF THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984 IS NECESSARY

Briefly, the child support problem has two equally important components: inadequate amounts of support and insufficient enforcement of even those amounts that are ordered. While recent Census Bureau data confirms how low child support awards are, perhaps my favorite example of the inequities is the Colorado research which showed that two-thirds of the fathers studied were ordered to pay less per month for child support than they paid on monthly car loan payments. With respect to enforcement, nationally about half of all mothers receive the full amount of support ordered; in many areas the percentage is considerably lower. Overall, insufficient support contributes to the decline in the standard of living for women and children upon divorce, a decline which one study found to be 73%, as compared with a 42% increase for men.[1/]

The Child Support Enforcement Amendments of 1984 will go a long way towards improving the enforcement aspect of this system. We urge Congress to oversee the state implementation of this important legislation, as to achieve compliance each state must enact legislation and hundreds of administrative agencies and court systems must drastically alter their procedures. The key to effective support enforcement contained in the legislation is the provision for automatic wage withholding if an obligor falls behind by more than one month's worth of payments. We are especially mindful that enforcement of support will not be achieved unless the interstate procedures operate smoothly and unless the limited defenses to non-payment of support are maintained and indeed strengthened.

[1/] Weitzman, The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards, 28 U.C.L.A. L. REV 1181, 1251 (1981).

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NEW FEDERAL LEGISLATION IS NEEDED DIRECTING STATES TO REQUIRE A PRESUMPTION OF AUTOMATIC COST OF LIVING ADJUSTMENTS TO CHILD SUPPORT AWARDS

While the oversight of state implementation of existing law is a vital role for Congress, there is also an affirmative need for further federal legislation. In the interests of time, I would like to confine my remarks this morning to one critical area requiring legislative action: the need for a federal statute directing states to require a presumption of automatic cost of living adjustments to child support awards.

In almost every state, a custodial parent seeking an increase in child support must take the initiative to petition the court on behalf of herself and her children. In practical terms, this means that today there are mothers raising teenage children who receive the same amount of support that was ordered in the early 1970's when those children were toddlers. Mothers often do not seek modification of their support orders because they cannot afford to hire attorneys or take time off from work, because they do not want to antagonize the father of their children and jeopardize that relationship, or because they fear counterclaims which will produce protracted litigation.

The cost to the family is severe. An award of child support which was probably inadequate when issued many years ago now bears no relation to the increased costs of raising older children or of meeting the demands of inflation.

Attached to this brief statement is a Minnesota statute which stands as an example to the nation of a fair and effective method of beginning to address this problem. Briefly, the statute provides that child support be automatically increased every two years according to a cost of living index set in the original order. The statute gives the non-custodial parent the right to a hearing to argue that the increase should not take place, but it puts the burden on him to request the hearing. Essentially, it creates a presumption that child support will be increased every two years.

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There are a number of ways states could provide for such automatic cost of living adjustments. Congress need not adopt one model just as it has not adopted one guideline for determining the amount of the initial award. But we do urge Congress to mandate, as an amendment to existing child support statutes, that each state enact legislation creating a presumption of a periodic automatic cost of living adjustment. While this will not solve the entire problem of low child support awards, it will be a decisive step in the direction of assuring adequate support over time for our nation's children.

STATUTES

Minnesota

MARRIAGE DISSOLUTION

518.641. Cost-of-living adjustments in child support order

Subdivision 1. Requirement. An order for child support shall provide for a biennial adjustment in the amount to be paid based on a change in the cost-of-living. The order shall specify the cost-of-living index to be applied. The court may use the consumer price index for all urban consumers, Minneapolis-St. Paul (CPI-U), the consumer price index for wage earners and clerical, Minneapolis-St. Paul (CPI-W), or another cost-of-living index published by the department of labor which it specifically finds is more appropriate. The court may specify that the housing component be excluded from the cost-of-living adjustment. Cost-of-living increases under this section shall be compounded. It may also increase the amount by more than the cost-of-living adjustment by agreement of the parties or by making further findings. The adjustment becomes effective on the first of May of the year in which it is made. A court may waive the requirement of the cost-of-living clause if it expressly finds that the obligor's occupation or income, or both, does not provide for cost-of-living adjustment or that the order for child support has a provision such as a step increase that has the effect of a cost-of-living clause. The commissioner of public welfare may promulgate rules under this section in accordance with the rulemaking provisions of chapter 14.

Subd. 2. Conditions. No adjustment under this section may be made unless the order provides for it and until the following conditions are met:

(a) the obligee or public authority serves notice of its application for adjustment by mail on the obligor at the obligor's last known address at least 20 days before the effective date of the adjustment;

(b) the notice to the obligor shall inform the obligor that an adjustment in payments shall become effective on the first of May; and

(c) after receipt of notice and before the effective day of the adjustment, the obligor fails to request a hearing on the issue of whether the adjustment should take effect, and ex parte, to stay imposition of the adjustment pending outcome of the hearing.

Subd. 3. Result of hearing. If, at a hearing pursuant to this section, the obligor establishes an insufficient cost of living or other increase in income that prevents fulfillment of the adjusted child support obligation, the court may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish this insufficient increase in income, the adjustment shall take effect as of the date it would have become effective had no hearing been requested.

Subd. 4. Form. The department of public welfare shall prepare and make available to the court and obligors a form to be submitted to the department by the obligor in support of a request for hearing under this section. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

Subd. 5. Request for cost-of-living clause. A motion for enforcement or modification of an existing child support order shall include a request for a cost-of-living clause. The court may deny the request only upon an express finding that the obligor's occupation, income, or both, does not provide for a cost-of-living adjustment or that the existing child support order either has a cost-of-living clause or sets forth a step increase which has the effect of a cost-of-living adjustment.

Laws 1983, c. 308, § 24, eff. Aug. 1, 1983.

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Ms. POLIKOFF. Chairman Specter, although I have kept my remarks to the child support area, I am, of course, quite experienced also in the child custody area, and I would like to make one brief comment on this earlier subject of this hearing.

Senator SPECTER. By all means.

Ms. POLIKOFF. That is, if your subcommittee is going to look into Federal legislation in this area, I would urge it to consider, and I would be happy to meet with an appropriate staff, the impact of court awards of joint custody on international and domestic parental kidnaping.

We have an increasing number of orders that term the custody award "joint." However, the studies do make it clear that 90 percent or more of those orders are joint legal custody. Physical custody remains in one parent, and over 70 percent of the time that parent is the mother.

Our purpose, of course, is to deter disruption in the lives of children, not to have them taken out of the country or across State lines, out of the custodial arrangement set by the court. When parents have joint legal custody, but sole physical custody of their children, it looks like any other sole custody arrangement, but the papers say joint legal custody; those mothers who are usually the physical custodians, have an impossible time getting any assistance whatsoever, even though the disruption to the children is exactly the same, and, the custodial disruption, is exactly the same.

This is a fact that lawyers in the field have remarked upon. The suggestion from the ABA has been that where there is joint custody that the order have a provision that specifies custody for jurisdictional purposes, and makes it clear that if the child is taken out of that jurisdiction, that there has been a parental kidnaping that can be acted upon. I would ask the subcommittee, in seeking to propose comprehensive legislation, to look at that problem as well.

Senator SPECTER. Thank you, very much, Ms. Polikoff. We are grateful for your assistance.

Mr. Dixon, thank you for joining us. We look forward to your testimony.

STATEMENT OF WAYNE E. DIXON, CONSULTANT, WASHINGTON, DC

Mr. DIXON. Thank you, Mr. Chairman, for permitting me to speak here today. I commend you for your interest in the child support program.

What comes before the safety and economic well-being of a child? Apparently, for the State Department people who just testified, as well as many local government agencies and courts responsible for child support enforcement, the answer is clear. Everything else.

The 1984 Federal child support amendments, in my opinion, virtually completed Congress' job of providing States with an effective arsenal of laws and funding, by which States should be able to double and redouble their child support collections over the next 4 or 5 years. Unfortunately, I must advise you that State results over the first half of fiscal 1985 indicate a strong and highly undesirable trend; one that is totally contrary to the congressional intent behind the 1984 child support amendments.

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Data that States submit to the Federal Office of Child Support Enforcement shows that decreased collections in 42 out of 47 reporting States resulted in a 16-percent decline in those 47 States AFDC-related child support collections, when the 6-month total for October 1984 to March 1985 was compared to the semiannual collection rate for 1984.

To the working taxpayer, this portends a possible loss of $150 million in 1985. This money would have been used to offset AFDC costs after the first $50 collected each month was given to the AFDC family without reducing the AFDC grant.

Also of great concern to the taxpayer is the fact that the Federal Government, which pays most of the costs of State administration of child support activity, invested $506 million in 1984, while its share of collection was only $401 million; adding $100 million to the Federal deficit.

In 1984, State child support agencies opened 2.4 million new child support cases due to illegitimate birth, desertion, and divorce. Yet, the number of cases with payments to State child support programs increased by a mere 86,000. Over the first half of 1985, another 1.3 million child support cases have been opened. While collections for non-AFDC cases increased, the number of AFDC-related cases with collections has dropped by 4 percent from the 1984 level in 1985.

Some of the reasons for a lack of hoped-for progress may be: First, the 1984 child support amendments sought to increase non-AFDC collections by restructuring bounty payments to include non-AFDC families; some States appear to have sharply reduced their AFDC case collection efforts to increase their bounties.

Second, the 1984 amendments increase bounty payment rates for improvements to States' cost/effectiveness ratios. This may have prompted States to seek collections only for middle or upper class cases with larger support potential and ignore those in poverty or near poverty living conditions; those families who benefit the most from child support as a hedge against welfare.

Third, cooperation between States in AFDC-related support enforcement, including medical support to reduce medical costs, is a travesty; only 5 percent of AFDC-related support in 1984 was collected across State lines.

Fourth, in many States, State and local courts are the primary bottleneck in child support enforcement. This may be due to inadequate resources provided by State legislatures, lack of cooperation between courts and the other child support adjuncts—prosecutors, police and agencies whose data could be used to locate absent parents, or a lack of leadership by executive agencies.

If Federal child support legislation is complete and Federal funding is not only generous but possibly profligate, what should Congress do now? The 1984 amendments recognized the fact that developing a smooth-running and effective State child support system requires coordination and commitment of numerous executive and judicial bodies within each unique State, as well as between neighboring and distant States.

In the 1984 amendments, Congress required States to establish independent child support commissions to examine all of the factors involved in solving this acute, tragic national problem. Con-

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gress should, as it is doing today, gather and examine all available, current relevant information, and make it available to those child support commissions, who are largely dependent on fragmentary or outdated information fed to them by the very State and local bureaucracies whose performance they seek to measure.

Congress might contact State child support commissions for status reports, to show the importance Congress places on improving child support efforts.

In my opinion, an informed and outraged electorate is the ultimate weapon to force State and local governments to utilize the awesome child support enforcement weapons and resources with which Congress has provided them.

Senator SPECTER. Thank you. Thank you very much, Mr. Dixon.

Mr. Dixon, what is your view as to Ms. Polikoff's recommendation for a cost of living adjustment for support payments? We argue about COLA's. This would not cost the Treasury anything.

Mr. DIXON. Mr. Chairman, the 1983 Child Support Survey by the census shows that of the 8.4 million mothers of children whose father was absent from the home, some 1 million of the 8.4 million had child support that was being paid at the rate of at least $200 a month. Another 1.9 million averaged for less than that.

So 5.5 million of these mothers received no child support whatsoever. While I can certainly sympathize with the problem of the 1 million out of 8.4 million, who are receiving $200 or more in support, who certainly would be helped by COLA increases, I think the biggest problems are the 5.5 million who are getting nothing; then, the 1.9 million who are receiving just token support.

Senator SPECTER. So you think that resources should be directed first at the women who are not receiving any support before we direct attention to the cost-of-living adjustment?

Mr. DIXON. Yes.

Senator SPECTER. Well, it is no administrative problem for the Federal Government to impose it. It is an administrative problem for the local courts, then, who foresee the petitions for disallowance. So why not, I guess is the question.

Mr. DIXON. I certainly would not say that this should not be done, but I am saying that the problems that I believe Congress should be addressing are of much greater magnitude with the inflation rate now at a very low level. Minimal, COLA's would occur as a result of such legislation.

Senator SPECTER. So your thought is that we ought to look at other problems on a priority basis. If we could get to this one it would be good to do as well.

Mr. DIXON. For the 5.5 million mothers receiving no support at all would a 20-percent increase help in raising a child?

Senator SPECTER. Twenty percent over nothing stays at nothing, does it not?

Mr. DIXON. Yes.

Senator SPECTER. Ms. Polikoff, you talked about automatic wage withholding, which is provided in the Federal law. Garnishment of wages, customary legal term, is something which has been used relatively rarely. Do States, absent the Federal law, customarily, to your knowledge, permit garnishment of wages?

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Ms. POLIKOFF. Before the Federal law was enacted it was the practice in most States, but not all of them, to only permit garnishment for support arrearages; so that if the person had fallen behind in support the judgment could be obtained, and wages could be garnished——

Senator SPECTER. Because in most cases you cannot get garnishment even with a judgment.

Ms. POLIKOFF. In some you could, however, get that garnishment.

Senator SPECTER. But now the withholding is not garnishment, because you do not have a judgment, but it is automatic once the inclination has been observed to fall behind on support payments.

Ms. POLIKOFF. That is correct, and it is going to revolutionize the way support is paid.

Senator SPECTER. And that is a Federal statute. Sometimes all of us do not know all the provisions in the law that we enact. That will not be a shock to anyone; but just to be clear, Federal law authorizes the withholding of wages or salary from someone who has not paid support for a 1-month period.

Ms. Polikoff, What the Federal law does is to require every State to enact its own legislation that must contain a minimum provision of authorizing this withholding upon 1 month's arrearages.

Senator SPECTER. Is there some carrot, like withholding State highway funds?

Ms. POLIKOFF. No. Withholding child support funds, under part D, title 4 of the Social Security Act, called the 4–D program, the funding is provided for State child support programs.

Senator SPECTER. Those Federal funds are conditioned on State compliance?

Ms. POLIKOFF. State compliance, with the amendments, which are very complex.

Senator SPECTER. What do you think, Mr. Dixon, of that kind of Federal requirement? I could have called it mandate, dictation.

Mr. DIXON. Mr. Chairman, in 1973, the existence of massive amounts of welfare errors came to light. The administration and the Congress put together a fiscal sanction program to induce the States to reduce their error rates. The AFDC sanctions have not been imposed, and the error rate stays about $1 billion a year ever since.

The lawyers retained by the States made an enormous amount of money fighting sanctions. Tons of congressional testimony have been taken. The problems still exists. Threatening to withhold the relatively small amount of money involved, I do not believe, is going to be successful.

Senator SPECTER. There are sometimes concerns about having the Federal Government sticking its long nose into State's rights through a vehicle of limiting appropriations. We had the argument raised on minimum drinking age last year, but I am interested in your view that Federal expenditures on an AFDC give the Federal Government a very major interest in acting in this field.

Mr. DIXON. I think to the contrary. I think child support, as you just used the term, exemplifies "State's rights." It is the States' responsibility. The Constitution requires States to respect judicial proceedings, such as child support orders from other States.

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I believe the responsibility of Congress is to follow up on its well conceived mandate for the States to establish child support commissions, but to give the public, and give these commissions valid current information by which successes up through the last few months should be evaluated.

Senator SPECTER. So you think the States should be looking at what the AFDC does?

Mr. DIXON. I think this is a new federalism, if you will. The Federal Government has given States the resources, and provided the vehicle for enforcement across State lines. It is up to the State and local courts to interdict absent parents who are not making collections, bring them to court, force them to pay or take away their freedom as a consequence.

Back to numbers; there are about 5.5 million of these custodial child parents with no support whatever.

Senator SPECTER. How do we deal with that effectively, Mr. Dixon?

Mr. DIXON. The courts are really the key. Individual courts have to be able to handle hundreds of child support cases a week instead of dozens.

Senator SPECTER. The new law that goes into effect on October 1 should be of help on this?

Mr. DIXON. No. It will not mandate local courts to prioritize on child support or paternity cases, or even conduct rapid hearings or take prompt action on delinquent child support cases in order to impose garnishment.

Senator SPECTER. Should we act on that? Should the Federal Government put a requirement for special listing for priority there?

Mr. DIXON. As a strong supporter of the new federalism, where the responsibilities belong with the States, I feel it is now up to the States. I think the Federal Government has done what it can and should do. I think the people in the States—the taxpayers; the voters—need to demand from their courts, and from their public officials, that all child support cases be handled in an expeditious manner, and if not, vote in new Governors, State representatives and Senators who will do it.

Senator SPECTER. Well, thank you very much. We are just beginning this subject. We will have a great deal to watch, and I am glad to establish the contact with both of you as experts in this field, because it is going to be a new procedure as of October 1, and this subcommittee is going to be watching closely at what is done. We are dealing with a very delicate balance; and I quite agree, to the extent that we can get the States to do their job, that this is what ought to be done, and it is a very massive problem, and a very important problem; and there are many women and children who need their lawful debts paid.

Thank you very much. We will be in touch further. We will be having further hearings as we see the implementation of the new law.

[Whereupon, at 11:40 a.m, the subcommittee adjourned.]

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